COVER LETTER

(Date of mailing to the Supreme Court)

Clerk's Office
Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

RE: PEOPLE OF THE STATE OF MICHIGAN v KELLIE NICHOLE STOCK
(Print your name)

Supreme Court No. 160968 (Leave blank - the Clerk will assign a number for you.)
Court of Appeals No. 340541 (Get this number from the Court of Appeals decision.)
Trial Court No. 17-003509-01-FC (Get this number from Court of Appeals brief or the PSIR.)

Dear Clerk:

Enclosed please find the originals of the documents checked below. (Put a check mark in the boxes of the documents you are sending.) I am indigent and cannot provide four copies.

- [x] Application for Leave to Appeal
- [x] Copy of Trial Court decision
- [x] Copy of Court of Appeals decision
- [ ] PSIR (required **only** if you raise an issue related to the sentence imposed on your conviction **and** the PSIR was not previously filed with the Court of Appeals)
- [ ] Transcript of jury instructions (required **only** if you are challenging an instruction on appeal **and** the transcript was not previously filed with the Court of Appeals)
- [x] Motion to Waive Fees / Affidavit of Indigency
- [x] Proof of Service
- [x] Other Register of Actions, DPD Manual

****You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals****

Kellie N Stock
(Sign your name)

Kellie Stock 260350
(Print your name and, if incarcerated, MDOC number)

Womens' Huron Valley
(Print name of correctional facility if incarcerated)

3201 Bemis Rd
(Print your address or address of correctional facility)

Ypsilanti, MI 48197

Copy sent to:

INSTRUCTIONS

1. You will need 2 copies and the originals of this letter and the pleadings listed above.
2. Mail the originals of this letter and the pleadings to the Supreme Court Clerk.
3. Mail 1 copy of this letter and the pleadings to the prosecutor.
4. Keep 1 copy of this letter and the pleadings for your file.

TITLE PAGE

INSTRUCTIONS: This application is for use in *criminal* appeals only. If you are appealing a Court of Appeals decision involving a civil action, use the form designed for that appeal type. Answer each question completely and add more pages if necessary.

IN THE MICHIGAN SUPREME COURT

PRO PER CRIMINAL APPLICATION FOR LEAVE TO APPEAL

I am appealing a Court of Appeals decision that affirmed my conviction(s) and sentence(s) in whole or in part, affirmed the trial court's denial of my motion for relief from judgment, or denied my application for leave to appeal in that court.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

Supreme Court No. 160968
(Leave blank)

Court of Appeals No. 340541
(See Court of Appeals decision)

Kellie Nichole Stock
(Print your name)

Trial Court No. 17-003509-01-FC
(See Court of Appeals decision or PSIR)

Defendant-Appellant.

I am currently incarcerated in a Michigan, federal, or other state correctional facility. ⊗ Yes ○ No

If Yes, provide the name and address of the correctional facility:

Women's Huron Valley
(Print name of correctional facility)
3201 Bemis Rd.
(Print street address of correctional facility)
Ypsilanti, MI 48197
(Print city, state and zip code of correctional facility)

FILING DEADLINE: For incarcerated persons, the application will be accepted as timely filed by the Supreme Court if received on or before the 56-day filing deadline or if it bears a date stamp from the correctional facility on or before the filing deadline and (1) the case involves a criminal appeal, (2) you are incarcerated, (3) you are acting without an attorney, and (4) you include a sworn statement identifying the date the papers were given to the correctional facility for mailing to the Court and indicating that first-class postage was prepaid. MCR 7.305(C)(4).

For persons who are not incarcerated, the application must be received by the Supreme Court on or before the 56-day deadline or it will be rejected as untimely. No extensions can be given to the filing deadline.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

INSTRUCTIONS: In the sections below, write out those issues you want to raise in the Supreme Court that were raised in the Court of Appeals in either a brief prepared by your attorney or a supplemental brief that you prepared. To raise new issues, go to page 8.

ISSUES RAISED IN COURT OF APPEALS

ISSUE I:

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Ms. Stock's trial counsel violated her Sixth amendment right to the effective assistance of counsel when he failed to properly investigate all charges against Ms. Stock, failed to challenge the search warrant for her hospital records or otherwise object to the admission of her toxicology report, failed to challenge or otherwise object to the argument that she tested positive for cocaine rather than cocaine metabolites, and failed to make a motion for directed verdict after the close of the prosecutor's case on the operating-license, suspended, revoked, denied causing death and causing serious injury charges and object to the jury instructions given for those two charges

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages. The Court of Appeals finds that since they vacated the Driving while Suspended, Revoked, Denied causing death and causing serious injury charges that they need not address ineffective assistance of counsel on this issue. But the fact that the trial attorney allowed defendant to be convicted with no evidence to satisfy the element of "suspended," is very strong evidence that he never even investigated the applicable statute or relevant case law. This is a strong indication that he didn't investigate ANY of the relevant statutes or relevant case law or even the actual elements of the statutes was accused of violating.

The Court of Appeals has important facts mixed up on the issue of trial attorney lying to defendant, which facts are demonstrated in Ginther hearing (see attached). This ruling that the trial attorney claimed the court made is nowhere in any transcript, not on the Register of Actions, and when the issue was discussed at Ginther hearing the Court still never said it ruled that way. The trial attorney was ineffective for not putting objections on the record to preserve for appellate review and for not objecting to a record not being made which effectively denied defendant her one appeal by right. cont'd Page 3

Issue 1:

The Court of Appeals reasoning in determining that the defendant did not prove trial attorney lied (II: Ineffective Assistance of Counsel P.7 Court of Appeals) to her is erroneous because 1.) It is based on incorrect facts (as demonstrated at Ginther hearing. 2.) It is based on the fact the record is silent where the record is actually not silent, even if there was a ruling without a record of the basis for the ruling, the ruling is rendered arbitrary.

1.) Court of Appeals stated that it is unlikely defense counsel lied because "Furthermore, the note seemingly reflects trial counsels vigorous advocacy, to the point of making an effort to introduce defendants desired evidence notwithstanding a preclusive ruling by court."

The Court of Appeals mistakenly thinks it was trial counsel that said "I'm going to do it on accident", referring to getting the evidence in. It was defendant who said that, demonstrated in Ginther Hearing P. 69-71

Appellate Attorney Kierpaul: okay okay. And ~~you~~ were you aware of any -- any court hearings

Cont...

where the court ruled that Mr. Longstreet could not use that information that they were fired during your trial?

Defendant Stock: I'm not aware of any. I definitely was not present for any.

Kierpaul: okay. Do you recall if Mr. Longstreet ever told you the court had ruled that way?

Stock: yes I do. He said that during trial, I -- I wrote him a note during trial.

Kierpaul: okay

Stock: And I said, couldn't you bring out that they got fired? And he said to me that the Judg ruled on Tuesday that we couldn't -- I couldn bring it up. And I said to him, well, I'm going to do it on accident.

Kierpaul: On accident. okay. In anticipation that you were going to testify?

Stock: yes sir.

Kierpaul: okay, okay.

Cont...

Kierpaul: Your Honor, if I might approach?

Court: yes. you have shown counsel?

Kierpaul: yes

Kierpaul: Ms. Stock, I'm going to approach. If you could please review what I'm handing you.

Stock: That's my -- ys, I know exactly what it is.

Kierpaul: All right And what would that be, Ms. Stock

Stock: This is the note I passed to my attorney during trial.

Kierpaul: okay. And on that note, what did you ask him?

Stock: Can you bring it out that Jenkins and Howell were fired?

Kierpaul: And what did Mr. Longstreet --

Stock: Judge ruled on Tuesday I couldn't bring it up.

cont.

Kierpaul: okay. And then you wrote something underneath that?

Stock: I'm going to do it on accident - "accident meaning quotation marks.

Kierpaul: okay. Thank you Ms. Stock.

Kierpaul: And judge, this was part of my motion for a new trial, if --

Court: And who said I'm going to bring it out on [redacted] accident? Did you mean to write, I'm going to bring it out on purpose?

Stock: no, sir. Intended --

Court: How - how did you write a note that said I'm going to bring it out on accident if you were intending to do it purposefully? I'm confused.

Stock: Well, thats why I had the accident in quotation marks, because like -- I wanted it to be known.

Court: How were you going to do it on accident whe you said you were planning on violating my order?

Cont...

Stock: Because I didnt believe it was an order I had never seen the order.

Court: But do you think that the fact that you were going to do that was on accident or was it on purpose?

Stock: I guess, sir, that it was on purpose.

Court: Okay. I just -- all right.

It is very clear that it is defendant who wrote "I'm going to do it on accident." So when the Court of Appeals said "Furthermore, the note seemingly reflects trial counsels vigorous advocacy to the point of making an effort to introduce defendants desired evidence, not withstanding a preclusive order by the court," this statement is based on a mistaken impression that it was the trial attorney that said he was going to "do it on accident" and thus a mistaken impression that the trial counsel "vigorausly defended" his client.

2.) Regarding this same issue. The Court of Appeals also said "However, defendents contention relies on the assumption that no such ruling existed. Doubt is not proof." They cite People v. Wolfe,

cont...

440 Mich 508, 519, 489 NW2d 748 (1992): "Nevertheless, because doubt about credibility is not a substitute for evidence of guilt, we move now to a review of the evidence."

In *Wolfe*, the court is talking about it not being irrational for a jury to reject defendants version of the facts in favor of the police officer.

In the present issue the defendant is not asking the court to find it irrational for a jury to reject defendants version of the facts. The defendant is not expecting the court to rely on her version of the facts. The defendant asks the court to rely on the record.

A court speaks through it's written orders and judgements (U.S. v. Gallo, 763 F.2d 1504. There is no record. MCR 8.108 (B), in relevent part states: The court reporter or recorder shall attend the court sessions under the direction of the court and take a verbatim record of the following (f) opinions and orders dictated by the court and other matters as may be prescribed by the court. There is no such record.

MCR 8.119 D(1)(2) Case history: The clerk shall create and maintain a case history of each case,

cont...

known as a register of actions, in the courts automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case...

There is no entry on the Register of Actions concerning any hearing. (See appendix 1, Register of Actions)

In the commentary: staff comment concerning MCR 8.119 (D)(1)(c) expedites the ordering of transcripts in all appeals by requiring the circuit courts register of actions to include a notation as to whether a hearing was held on the record and the name and certification number of the court reporter or recorder responsible for transcribing the hearing.

The trial attorney claims the hearing was on the record Ginther Hearing P. 16, 17, 18, but there is no record.

Appellate Attorney (Kierpaul): And was there a point during trial where Ms. Stock asked you to bring up the fact that they were terminated or fired?

cont...

Trial Attorney (Longstreet): There was.

Kierpaul: And what was your response to her

Longstreet: If I may review documents to give you a proper answer.

Kierpaul: Absolutely sir.

Longstreet: Thank you. I believe there was a note on the first day of the trial, she indicates to me in her handwriting, can you bring it out that Jenkins? Howell were fired. My answer, the judge ruled Tuesday I couldnt bring it up.

Longstreet: It was my understand that I did try to challenge those officers and bring in that they weren't -- that they were lying, in regards to their credibility. The prosecuter objected saying they pled Fifth Ammendment. We have, as lawyers we have no right to call a person who we reasonably know is going to plead the Fifth Ammendment. Over my objections the court allowed -- allowed - or did not allow me to bring in these officers that were fired for purposes of attacking their credibility.

Kierpaul: Okay. And do you believe that was all done on the record.

cont...

Longstreet: I believe so.

Kierpaul: Was Ms. Stock present for that?

Longstreet: I'm not sure I believe she probably was. I probably didn't do anything outside the presence of Ms. Stock. If it was, it was waived on the record. But I'm not 100% certain sir.

Kierpaul: Okay. And do you remember if the court issued a written order.

Longstreet: I know there was no written order. The court speaks through it's record. So even if it's not in writing, stenographer has it, sir.

Kierpaul: Okay. Allright. And if it's not in any of the transcripts I have, would you have an explanation for that?

Longstreet: I would not sir.

Ginther Hearing, P. 83. The trial court says: Well lets assume theres not a court order...

The court had ample opportunity to say that there was such a court order, but he didn't.

Issue #1 - P. 10

Cont...

The lack of any kind of entry in the Register of Actions, the lack of any record of this ruling, and the lack of the Court saying it ruled this way proves that there was no hearing.

But for the sake of further argument I will lis any other possibilities.

A Court reporter is an officer of the Court. There's no reason to doubt her certificate, that her transcripts are full, true and correct.

1.) There was a hearing and defendant did not waive her right to be present.

The record is silent concerning waiver of right to be present and "An accused's waiver of right to be present at every stage of trial may not be presumed from a silent record." People v. Ewing, 48 Mich App. 657 Also, "Defense counsel could not waive constitutional right of felony accused to be present at trial." Ewing IC In fact, no waiver of constitution right may be presumed from a silent record. Page v. Lafler, 2007 U.S. Dist. LEXIS 99856, citing Johnson v. Zerbst, 304 U.S. 458.

cont...

The only other possible option is that the Court didn't feel like this was a "critical stage" of trial But it's definately a critical stage. This alleged Court ruling affected the defendants right to ~~be~~ present a defense, right to impeach through cross-examination, right to show evidence of bias on the part of office Donegan and the right to testify on her own behalf. The appellant will not "simply announce her position and then leave it to the court," but will explain further in issue #5. The limitations on the cross examination of officer Donegan.

No matter which of these possibilities occured, it is statutorily and constitutionally unacceptable. And it is ineffective assistance of counsel.

MCLS Const. Art I, § 20 confers the right to an appeal. "An incomplete lower court record can jeopardice the one appeal guaran teed to criminal defendants by Mich. Const. Art I § 20." People v. Wilson, 96 Mich App 792 (1980). Although, "not every gap in record on appeal requires reversal of appeal." Wilson Id. But where there are evidentary decisions it does. In a similiar situation, the Michigan Court of Appeals said, "Even if the court held a hearing out of the presence of defendant, counsel is

cont...

ineffective for not making objections on the record to preserve for appeal. "Defense counsel concedes, however, that regardless whether evidentiary discussions were held in chambers that resulted in evidentiary decisions, defendant trial counsel had the duty to preserve any issue for appeal by making a record during the trial court proceedings. We agree and find that defendant's trial counsel's conduct in this regard also fell below an objective standard of reasonableness." People v. Glatfelter, 2019 Mich. App. LEXIS 5020 (# 340308)

At the further Hearing, the court still declined to say whether it ruled this way and declined to provide any basis for it's alleged ruling. With no basis for the ruling, it's nothing more than an arbitrary denial of the right to impeach officer Donegan through cross-examination, the right to show bias on the part of officer Donegan the right to show through evidence that Donegan is testifying vindictively because he is mad that defendants common law husbands Charges were dismissed when an officer made knowingly false statements in order to secure a search warrant and the right for defendants to testify on her own behalf. All these rights come from Const. Amend XI

Cont...

right to present a defense and confrontation clause right to cross-examine a witness. (U.S. Const. Amend XI).

Defendant feels she is stating a Cronic (2) claim because since defendant has proved counsel lied, this is a breakdown in the adversarial process. Defendant would like to point out that it is extremely unlikely that a judge would make an important evidentiary decision without stating any basis for the decision and then still not state that he made the decision or state his reasoning at a Gunther hearing even though he knows the hearing is for the purpose of appellate review.

But even if not a Cronic claim trial. Counsel's error certainly satisfies the criteria as set forth in Strickland v. Washington 466 U.S. 668 (1984)

How this evidence would have been relevant and how it would be introduced is discussed in Issue #XV

* 1) Defendant's common-law husband was charged with drug and gun charges but the charges were dismissed when the Court discovered that police officers provided knowingly false statements

in an affidavit for a search warrant. The same vice team that lied to get a search warrant is this same vice team involved in defendants case. The vice team is mad that defendants husband charges were dismissed. This is evidence of bias on witness, Bradley Donegan, who was part of the vice team.

Defendant hopes to supply an affidavit from defendant's husband to show he would have testified to this information, but he is in the hospital. The instructions with this application says if defendant is missing documents, explain why and send as soon as possible.

Defense counsel was aware of this issue because an Officer Allen Williams (Detroit) was a part of the vice team. Officer Williams visited defendant at the county jail looking for information on human trafficking, which neither defendant or her husband know anything about. So trial counsel had this information that was relevant to show bias.

However, even without this information, Donegan's bias can be shown through the disciplinary actions taken against

his comrades, members of his team, officers Howell and Jenkins (Issue # XV)

Affidavit will be from Keith Sackett along with documents from Wayne County, 3rd Circuit, showing members from this team made knowingly false statements. Sackett's case was dismissed on 7-21-17, same day as defendant's jury verdict.

2) United States v. Cronic, 466 U.S. 648

ISSUE #1B

IA of C - Search Warrant

The COA violated the doctrine of stare decisis when it stated that the affidavit in support of the search warrant for defendant's toxicology had sufficient indicia of probable cause. The COA also erred when it found that failure to challenge the search warrant did not amount to ineffective assistance of counsel.

Although an issuing magistrate may draw reasonable inferences, United States V. Grahamm, 275 F3d 490, there was nothing in the affidavit from which a magistrate could draw a reasonable inference of intoxication.

The COA found that because, "the affiant described some aspects of defendants high speed driving, the fact that her vehicle had been reported stolen, and defendant's disregard for traffic control," that the affidavit established probable cause.

This conflicts with the opinion in People V DeBruyne, 2019 Mich. App. Lexis 3829.

The following facts in the affidavit for search warrant to draw DeBruyne's blood: "[A]n investigating officer submitted a form "search warrant, blood draw" affidavit to the district court. The

officer filled in the blanks for the date, time and location of the accident in a preprinted statement that he was "investigating an OUIL/OUIL/OWPD incident. The officer swore that his investigation led him to believe that DeBruyne was the operator of the motorcycle. Following a preprinted statement, "[T]hat the affiant has personally observed the above named operator and/or believes said person to be under the influence of alcohol, or a controlled substance, or both, or has an unlawful blood alcohol level, based on the following observation," the officer wrote; DeBruyne was the driver of a motorcycle involved in a fatal accident in which his female passenger was killed. Witness observed DeBruyne driving motorcycle in reckless manner, speeding [Eastbound] Austin Rd.. DeBruyne is at HFH being treated for severe injury.

Concerning this affidavit, the Court of Appeals held, "The warrant in this case was woefully deficient. A person who is in an accident after driving in a reckless manner and speeding may be intoxicated. However, there are other explanations for such behavior, including road rage, showing off, tardiness, or an emergency. See People V. Sloan, 450 Mich 160, 164, 171-172, 538 NW 2d 380 (1995), overruled on the grounds by

Hawkins, 468 Mich at 511 (holding an officers mere conclusion or opinion in an affidavit that a person responsible for an accident" appear[ed] [to be] under the influence of intoxicating liquor," without more, was insufficient to support probable cause finding. The affidavit as written expresses the officers mere conclusion that DeBruyns was intoxicated based on very broad desciptions of his driving. The issuing judge could not reach an independent finding that probable cause existed based on the information provided and the resultant warrant was invalid.

As in DeBruyne, the affidavit in this case expresses the mere conclusions that "toxicology are (sic) necessary for prosection" based on very broad deseriptions of defendant's driving, speeding, disregard for traffic control signal, stolen car. None of these factors support probable cause for a search warrant for defendant's toxicology because none of the factors support the conclusion that defendant was intoxicated. The good faith exception does not ~~rescue~~ rescue this warrant.

Good Faith Exception

United States v. Leon, 468 US 897, 919-921, 104 S Ct. 3405, 82 L Ed. 2d 677 (1984), People v. Goldston, 470 Mich 523, 525-526, 682 nw2d 479 (2004). "[A] warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search. Leon, 428 U.S. 428 U.S. at 922. Whether the police is measured by a standard of objective reasonableness. Id.

An officer's reliance on a deficient warrant is not in good faith when "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization. Id. at 922n23.

Revelant in the present case and in De Bruyne, Id., is the third Leon exception. When the affidavit is so lacking in indicia of probable cause that a belief in its existence. is objectively unreasonable. These facts may support searching for evidence of a stolen car or speeding (black box) but not intoxication. No reasonable well trained officer could have believed that evidence of high speed driving or stolen cars could have been found in defendants toxicology.

As stated in Debruyne, Id, "The good faith exception will not apply if an officer relies on a warrant based on a "bare bones" affidavit so

lacking indicia of probable cause" that the officers reliance upon it was "entirely unreasonable People V. Czuprynski : 325 Mich. App. 449, 472, 926 NW2d 282 (2019).

It was stated in De Bruyne; "Nothing in the affidavit described how the fatal motorcycle accident occured or why the circumstances of the accident suggested intoxication. The affidavit consisted merely of non-specific, conclusory allegations of speeding and recklessness. Finding indicia of probable cause in the current affidavit would permit the good faith exception to swallow the exclusionary rule whole; every single motor vehicle accident, no matter the circumstances, would conceivably result in the issuance of a warrant to draw blood to test for intoxication.

In this case, finding indicia of probable cause in the affidavit would also allow the good faith exception to subsume the exclusionary rule and also allow the issuance of a warrant in Any motor vehicle accident to obtain the toxicology.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE II:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

Trial Court reversibly erred when it gave an inaccurate jury instruction.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

The Court of Appeals states that the question asked, "Does turning on lights constitute ordering the defendant to stop her vehicle under law?" does not require the Court to reinstruct that the signal must come from an officially marked vehicle. The Court should have reinstructed according to all elements and not used caselaw that a jury is not familiar with and, since it did use caselaw, it was required to instruct with the holding that comes from the case it used, People v. Green, 260 Mich App 710 (2004), which is that the signal, if it comes from siren or light (as opposed to voice or hand) must come from an adequately marked vehicle. Whether the vehicle was marked was an important issue in this case.

cont'd

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE III:

A. Write the issue exactly as it was phrased in the Court of Appeals brief. The prosecuter engaged in prosecutorial misconduct which denied Ms. Stock her due process right to a fair trial when he shifted the burden of proof to Ms. Stock, denigrated her defense counsel, and argued that Ms Stock had cocaine in her system. In the alternative, Ms. Stock's trial counsel was ineffective for not objecting to the prosecutorial misconduct

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

The prosecutor in this case not only argued that defendant's toxicology showed cocaine in his closing argument, he presented false evidence through the testimony of officer in Charge, Richard Schwab.

The Court of Appeals said that the prosecuter is making the argument based on inferences that a metabolite proves cocaine use. But the jury never had the information that defendant showed a positive result for metabolite. The jury was instead presented with only evidence that the toxicology showed positive for cocaine. This isn't "conflicting." It is false.

The jury never heard the word "metabolite."

cont'd

Issue #3 - P.1

Witness List - Prosecutorial Misconduct - Ineffective

Concerning the witness list, the Court of Appeals says that the Gintler testimony is confusing (Court of Appeals Opinion: IV Prosecutorial Misconduct) This is probably true because the circumstances are confusing.

There is no document that states that it is a witness list of all known res gestae witnesses and people known to investigating law enforcement officers MCL 767.40a(1)
There is a list that states: The names of the witnesses known to the People in the above-entitled case are listed below. The witnesses the People intend to produce at trial, pursuant to MCLA 767.40a(3), are designated by an "X" in the boxes to the left.
No boxes are checked and the document in neither signed nor dated. The are 17 names as follows: Dr. Slesek; Dr. Hlavaty; P.O. D. Jenkins; P.O. S. Howell; P.O. A. Hill; P.O. R. Hampton; Sgt. Pasharikovski; FT. Shepard; FT. Miller; Det. J. Velasco; Det. E. Jackson; Sgt. Pierson; Lila Goad; Michael Crummie; Squire Richardson; Sgt. Paul Warner; Sgt. L. Carter. It also lists officer in charge as P.O. Richard Squad, who I assume they mean Richard Schuch.

There is only one witness list filed with the court. It is dated 7-3-17 and signed by APA Dominic DeGrazia. The list is filed with the Court on 7-4-17. The list has same heading as the other and has boxes checked for those witnesses the prosecuter intends to call at trial.
This list was not filed with the court "no less than 30 days prior to trial in accordance

Issue #3 - P2

Witness List - Prosecutorial Misconduct - Ineffective with MCL 767.40a (3) No witness list was filed with the court other than this list.

The first document with no boxes checked must be the res gestae list. If it's not then there is no res gestae list. In any case, officer Bradley Donegan is not listed on any list until the list that's filed 11 days before trial, and even then he is not endorsed.

In discussing this lack of fair notice, the Court of Appeals states that witness Classie Butler shouldn't have been a surprise but did not say Donegan should come as no surprise. Donegan was never listed as a res gestae witness even though he's a police officer known to the prosecution. He never made a police report (TT. P.74 of Donegan's testimony, 7-20-17) He's nowhere in the entire discovery except to question witness Classie Butler on a matter about a deceased man found in an abandoned building that has nothing to do with this case. At the Ginther hearing (P.73,74 cross-exam. of appellant Stock) APA Blair attempts to show that Donegan wasn't a surprise.

Blair: You received discovery in this case, right?

Stock: From Ms George.

ISSUE #3, P3

Witness List - Prosecutorial Misconduct - Ineffective

Blair: And isn't it true that Bradley Donnigan (sic) was the officer in charge of this case?

Stock: No. No, ma'am, I [t] wasn't. Officer Schwab was the officer in charge of this case.

Blair: But he was included in your discovery packet?

Stock: No. No, ma'am, he was not. He was-- no, he was not.

Blair: There was-- you're testifying that there was no statement from a, Bradley Donnigan (sic) in your discovery packet?

Stock: Yes, I am.

Blair: Okay, But you're aware now that he did, correct?

Stock: That he did what?

Blair: Made a statement and testified to that statement.

Stock: He made - no, I am not aware of that. I never got a copy of that in discovery. I never knew - no. I did not.

There is no statement from Donegan. Not anywhere in discovery.

ISSUE #3 - P.4

Witness List - Prosecutorial Misconduct

Donegan was not on the res gestae list, was not endorsed as a witness the prosecutor intends to call at trial (MCL 767.40a (1) and (3)

The prosecution knows of Donegan. So he is not an unknown res gestae witness. 767.40a(1) says list all witnesses known to investigating law enforcement. The statute isn't asking to list all the law enforcement known to man, or every officer known at all, just ones who have something to add to the case. Donegan had nothing to add to the case. Now all of a sudden, when the officers who were involved decide to invoke their Fifth Amendment privelege, Donegan has something to say. Now all of a sudden he's a res gestae witness.

Defendant also wishes to make clear that she's not asserting there was an amended witness list. Again, there was only one witness list filed. Defendant testified at the Ginther hearing that when she asked her trial attorney about Butler and Donegan not being on the witness list she had, the res gestae list, the trial attorney told her that APA Degracia said he filed an amended witness list on 6-16-17. According to the Register of Actions, there was no amended list

Witness List - Prosecutorial Misconduct - Ineffective

on 6-16-17, or at any other time.

It can't be said that the prosecutor had the duty to add res gestae witnesses as they became known (MCL 767.40a(2)) because Donegan was already known. He just simply wasn't part of this transaction - He was not part of the res gestae.

A prosecutor may add or delete at any time upon leave of the court and good cause shown (MCL 767.40a(4)) The prosecutor didn't add or delete. He just filed a late witness list. "Add or delete" would come after the list of names the prosecutor intends to call at trial. The court didn't grant leave and didn't make a determination of good cause shown. People v. Perez, 255 Mich.App. 703 revd on other grounds.

This was ineffective assistance of counsel to not object to this witness who was known but not considered to have anything to shed light on the res gestae. It was ineffective assistance of counsel to not object to the late filing of a witness list. It was ineffective not to interview this witness. A competant attorney would ask, "How is it that you're not listed as a witness, didn't make a police report, and now all of a sudden you observed the incident?"

ISSUE #3 - P.6

Witness List - Prosecutorial Misconduct - Ineffective

A competent attorney would also have asked that question at trial. There is no plausible explanation. At trial, the defense attorney is able to establish that there was no police report. Donegan's answer is that he was working as an undercover. (TT. P. 74 7-20-17). First, there is nothing preventing an undercover officer from making a report about what he witnessed. He didn't make a report because he didn't witness anything concerning the case at hand except possibly witnessed the defendant driving the wrong way down the street. Second, the trial attorney's questioning was not designed to show Donegan's lack of observation, but to show that it was a pretextual traffic stop. Further questioning would have revealed -- at least made a strong inference to the jury that Donegan didn't actually witness this chase and accident. For example, "Is there anything preventing you from making a report that you saw a chase and fatal accident just because you were working undercover?" "Why didn't you?" "Is it because you didn't witness it?" "As a police officer you are aware that you're supposed to record your observations, right?" "As a police officer you know that if you made any first hand observations you would be listed as an eyewitness, right?"

ISSUE #3 - P.7

Further, as discussed in the issue concerning the cross examination of Donegan, this witness was biased.

This witness was not known to defense but he was known to investigating law enforcement officers. In People v. Callon, 256 Mich. App. 312, 326-327, 662 N.W.2d 501 (2003) the Court found the requirements of MCL 767.40a(1) satisfied because witness's identity was disclosed to the defendant through a toxicology report and the substance of the testimony was known. Here, the requirement of MCL 767.40a(1) was not satisfied. The identity was not known because there is nothing in discovery that would indicate Donegan as a possible witness and the substance of his testimony was not known. Donegan questioning Classie Butler about a dead body has nothing to do with the case and thus would indicate no reason why he would be called as a witness.

The prosecutor violated MCL 767.40a(1), (3), (4) He didn't list Butler or Donegan as witness, didn't endorse Donegan, and didn't ask for leave of the court and didn't receive proper determination of "good cause shown." This prejudiced defendant as discussed above.

ISSUE #3 - P. 8

To warrant a reversal for a violation of MCL. 767.40a, defendant must show he was prejudiced by noncompliance with the statute. People v. Everett, 318 Mich. App 511, 523 NW2d 94 (2017).

"Ultimately, error in the admission or exclusion of evidence does not warrant reversal if, in light of other properly admitted evidence, it does not affirmatively appear more probable than not that a different outcome would have resulted without the error. Id. at 523-524.

Defendant was prejudiced by this because she was denied the opportunity to question the witness as to the unlikelihood of him having actually been following behind and witnessing the incident and the opportunity to develop the bias of this witness based on members of his team being suspended/terminated and being in fear of criminal prosecution. (discussed further above in Limitation on the Cross-Examination of Donegan)

This prejudiced defendant because without the testimony of Donegan elements of fleeing and eluding I and II could not have been established whether the officers were in uniform, whether they were in an officially marked vehicle, whether they were in lawful performance of duty.

Issue #3 -P.9

Akua Mason and Lila Good.

Akua Mason and Lila Good were both endorsed as a witness the prosecutor intends to call at trial. The prosecutor dismissed both as cumulative. The Court never commented as to leave granted or good cause shown. (T.T. 7-21-17, P.20) The prosecutor had a duty to produce these witnesses. MCL 767.40a(4).

The Court's silence isn't permission because the prosecutor has to show good cause to delete from the witness list an endorsed witness. MCL 767.40a(4). But even assuming the Court's silence is considered, "by leave of the court and good cause shown," the defense attorney should have objected because their testimony wouldn't have been cumulative, it just would have been bad for the prosecution. Both made statements to the police and neither heard a siren. It's important that they testify about the lack of sirens because it rebutts the testimony of officer Donegan, who is the only person who claims to have heard a siren. The defense apparently needed more people to testify about a lack of siren because (a) a police officer's testimony is generally given greater weight than that of a citizen. People v. Bell, 74 Mich. App. 270 And (b) apparently the Court of Appeals thought Donegan's testimony establishes a

Issue #3 - P.10

siren even though uninterested witnesses Michael Crummie (didn't testify to a siren T.T. 7-20-17, PP. 27-31) and Squire Richardson didn't hear hear a siren (T.T. 7-20-17, P34). Witness victim Classie Butler didn't hear a siren (T.T. 7-20-17, P.49, 56).

The lack of a siren is very important because without a siren activated the police officers are actually breaking the law and thus, could not possibly be in lawful performance of their duty. MI Crim. JI 13.6a(1). One cannot be both "lawful," and breaking the law at the same time. MCL 257.603 is considered a chase statute and states in section (1) The provisions of this chapter is applicable to all government vehicles owned and operated by the United States, this state, or a county, city, township, village, district, or any other political subdivision of the state subject to the specific exceptions set forth in this chapter with reference to authorized emergency vehicles.
Section (3) describes that police can be exempt (from the motor vehicle code) while apprehending or chasing a suspected criminal
Section (3) says a driver of an emergency vehicle may do any of the following
(a) exceed the prima facie speed limits as long as he does not endanger life

or property, but...
Section (4) says a police vehicle is granted exemptions only if the driver sounds an audible signal by bell, siren, air horn, or exhaust whistle.
Section (5) says a police vehicle shall retain the exemptions without the audible signal if engaged in an emergency run in which silence was required.
However, silence was not required in this situation and, instead, would have been highly advisable and may have warned Mr Sims, the decedent, not to proceed through an unlit traffic signal.

Officers Howell and Jenkins clearly exceeded the prima facie speed limit (T.T. 7-20-17 P. 83 "I was doing the speed limit, they were going much faster.") The officers did not sound an audible signal. Only Donegan claims to have heard a signal.
Officers Howell and Jenkins broke the law and therefore could not be in "lawful" performance of their duties. "Lawful" must mean something. If it doesn't mean within the department's policy (COA opinion - VIII: Newly Discovered Evidence), and it doesn't mean to not be breaking the law, then what does it mean?
A statute should be read, if at all possible in a manner that does not render any

Issue #3 - P.12

part of the statute surplusage or nugatory. People v. Pinkney, 248 Mich. LEXIS 874 No. 154374 So "lawful" means something. It means more than just that the police were performing their duty. It means the manner in which they were performing their duty must be lawful

The prosecutor in this case did not get leave of the court. "At a trial level, prosecutorial claims of cumulativeness should be viewed with a jaundiced eye; on appeal the appellate court will carefully scrutinize the lower court's ruling when it results in excusing the people from calling one whom they have a duty to produce as a witness where defendant has made a timely objection.

The prosecutor didn't want Lila Goad and Akua Mason to testify because neither heard a siren. This is misconduct.

Alternatively, the trial attorney was ineffective for not objecting to dismissing all the witnesses who weren't called as cumulative

ISSUE IV:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

The prosecutor failed to present constitutionally sufficient evidence to sustain the convictions

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

The Court of Appeals seems to think that the jury was presented evidence of metabolites of cocaine. It was not. It, the jury, was only presented evidence of cocaine, which the toxicology did not show a positive result for

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

ISSUE V:

A. Write the issue exactly as it was phrased in the Court of Appeals brief. The trial court erred when it reversed itself mid-trial and allowed into evidence the toxicology report with Ms. Stock's name on it.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

In discussing whether it was fundamentally unfair to rule to suppress the toxicology report and allow defense, in his opening statement, to tell the jury they'd hear no evidence of intoxication, the Court of Appeals says that when the Court made that ruling he left open the possibility of the report coming in. The court didn't leave it open. It said the toxicology with Stocks name on it could not come in because it violated discovery and the "Mississippi" could not come in because the Court didn't know how the prosecution was going to "get that in." In other words, the prosecutor could not lay proper foundation. P.57, 7-19-17 The Court says it will not allow the records with the name, Stock, in unless there's an adjournment

Cont'd

Issue # 5

TT. 7-19-17, P. 86

It's the prosecutor who won't agree to the adjournment because he thinks he's going to lose the witness he has "on ice."
TT. 7-19-17, P. 86

The entire exchange concerning not allowing the toxicology is TT. 7-19-17, P. 82-90

The part where the Court reverses itself is TT 7-20-17, P. 4-7.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE VI

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

The trial court denied MS Stock's constitutional right to present a defense when it ruled that MS Stock could not present evidence that officers Howell and Jenkins were terminated or suspended for their violation of departmental policy as it related to police chases.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

cont'd

In the Court of Appeals opinion: VII. Exclusion of Evidence Regarding Officer's Discipline, the Court states: Notwithstanding the expansive array of alleged deficiencies in her trial counsel's performance, defendant notably does not challenge counsel's strategic assessment of the value of officers Howell and Jenkins testimonies.

Defendant challenges counsel's strategic assessment of the value of these officers testimony. Defendant challenges it now and defendant obviously wanted them to testify and their discipline to come in. That's why she wrote a note to her attorney during trial asking that their discipline be brought to the court and jury's attention. (same note discussed above).

The Court of Appeals also stakes that defendant fails to establish that this evidence is relevant and admissible and how defendant would have introduced such evidence. Defendant will do so now, also pointing out why trial counsel's strategic assessment was unsound.

The bias of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony. Del. v. Van Arsdall, 475 U.S. 673 (1986).

In Van Arsdall it was held 1.) The trial court's ruling, by cutting off all questioning about an event that the prosecution conceded had taken place and that a jury might reasonably have found furnished the witness a motive for favoring the prosecution in his testimony, had violated the accused's rights secured by the Confrontation Clause of the Sixth Amendment, regardless of whether it had affected the outcome of the trial; but 2.) that the constitutionally improper denial of an accused's opportunity to impeach a witness for bias is subject to harmless error analysis.

The court's ruling, if there was one, didn't just limit cross-examination, but cut it off completely.

Bias is a common-law evidentiary term used to describe the relationship between a party and a witness in favor of or against a party. Bias may be induced by a witness's like, dislike, or fear of a party, or by the witness's self interest. People v. Layher, 464 Mich. 756.

The defendant understands that the court has discretion to limit cross-examination on the basis of harassment, waste of time, cumulative evidence, or unfair prejudice. Here we have no actual ruling and here we don't have a limitation on the cross-

examination, we have a complete denial of cross-examination on a subject that the prosecution concedes happened and tends to show evidence of bias.

Clearly, if the jury has knowledge that the officers are suspended and that further investigation is pending, it is a reasonable inferrence that these officers have a motive to lie; to slant their testimony in favor of the prosecution.

Again, evidence of bias on the part of a witness is always relevant. Joyner, Id.

Also, "Extrinsic proof tending to establish a reason to fabricate in never collateral and may not be excluded on that ground. Harrington v. Jackson, Fed. Appx 367 quoting Justice v. Hoke, 90 F. 3d 43 (2nd Cir. 1996) quoting People v. Hurdy, 73 NW2d 40, 535 NE 2d 250.

This is because, "As a general principle, a witness's bias or prejudice may be shown by extrinsic evidence since 'particular conduct and circumstances form the only means practically available for effectively demonstrating the evidence of bias. 3A Wigmore, Evidence (Chadburn Rev), § 948 p 784. There is no conflict between this rule and MRE 608(b) See, e.g. United States

v. Opager, 589 F.2d 799, 801 (1979).

So, the evidence of officers Howell and Jenkins is relevant to show bias. And it was possible to be brought in through cross-examination, a right that's constitutionally protected through Const. Amend. VI, Confrontation Clause.

The Court of Appeals does not dispute that although a witness, as opposed to a criminal defendant, may assert the Fifth Amendment privelege against self-incrimination, he may not make a blanket assertion of the privelege. The Court of Appeals said they reject the argument (VII. Exclusion of Evidence Regarding Officer's Discipline, footnote 6) because defendant does not challenge trial counsel's assessment of the value of these officer's testimony. Again, that assessment is definitely challenged. The very fact that the prosecution all of sudden doesn't want them is an obvious clue that their testimony is not going to be helpful to the prosecution. If the Fifth Amendment was such a problem then the prosecutor could have just granted the officers immunity for their testimony. Putting them on the stand would have been very beneficial to the defense. There are many questions that could have been asked that are not incriminating. The Fifth

Issue VI - P.5

Amendment protects a person from being compelled to be a witness against himself in a criminal prosecution. It does not guarantee protections against civil liability or against losing one's job or damaging one's reputation. Allen v. Illinois, 478 U.S. 364. There's certainly no ruling by the trial court that these officers had a valid fifth Amendment privelege.

Either party may impeach its own witness as if called by the other party (MCL 767.40 a(6)). Just the question, "Is it true you were suspended for your role in this chase?" is enough to make a jury question the truthfulness of the witness's testimony. Especially where there's a pending force investigation. These officers may be testifying falsely in order to avoid losing their job

In United States v. Garrett, 542 F.3d 23 (6th Cir. 1976), there was a similar situation where the accuser, a police officer, was suspended for using drugs himself where the accusation against defendant was for selling drugs. The Court opined, "The jury was entitled to know that the witness who had accused Garrett of arranging the sale of heroin had been suspended because he was suspected of using hard drugs himself and had refused to submit to a urine test."

In Garrett, Id., the defense was at least permitted to bring out the fact that the witness, Lehman, was suspended and the lengths of the suspension, and the court ruled that even more facts ought to have been allowed to be developed in front of the jury.

The question, "Were you suspended for yar role in the chase?" isn't incriminating. It's a fact that the prosecutor is already aware of. The question doesn't furnish a link in a chain of evidence. The prosecutor was already aware of the suspension and the fact of the officers speaking the fact out loud doesn't all of a sudden put them in a jeopardy that didn't already exist.

"The Fifth Amendment may not be used in a mechanistic manner that subsumes a criminal defendant's Sixth Amendment right to present a defense merely in order to avoid having a witness testify to a fact that is already clearly established..." Davis v. Straub, 421 F.3d 365

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340511
(Print your name)

INSTRUCTIONS: In the sections below, write out those issues you want to raise in the Supreme Court that were raised in the Court of Appeals in either a brief prepared by your attorney or a supplemental brief that you prepared. To raise new issues, go to page 8.

ISSUES RAISED IN COURT OF APPEALS

ISSUE ~~II~~ VII

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Due Process of law under US Const, Am XIV and Const 1963, art 1, § 20 requires a new trial based on a recently obtained police department internal investigative memo that raises a reasonable doubt that officers Howell and Jenkins were in an official police vehicle or one that was adequately marked as a law enforcement vehicle and whether they were acting in the lawful performance of their duties and whether the internal investigative memo demonstrates officer Duregon committed perjury at trial and whether it demonstrates a lack of evidence that Ms. Stock is guilty and would be acquitted at trial.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Cont'd

ISSUE #4

The majority claims that actual cocaine can be inferred by the presence of metabolites. The problem with that reasoning is that the jury was never given evidence of metabolite from which to infer that. The word "metabolite" was not mentioned during the entirety of the trial except once when it was corrected by the prosecutor to the word "methadone."
A rational trier of fact could not have inferred the presence of any amount of cocaine from the presence of metabolite because they were never given evidence of metabolite. Instead they were given evidence of cocaine, which was not present.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Starlc, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE ~~II~~ VIII:

A. Write the issue exactly as it was phrased in the Court of Appeals brief. officers Howell and Jenkins had no probable cause for a pretextual traffic violation which is a civil infraction

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

The Court of Appeals decision vidates Michigan law.

cont'd

Issue # VIII - P.1

Probable Cause

In Michigan, a police officer may arrest without a warrant based on information and belief only for a felony. MCLA 764.15A.

Police officers Howell and Jenkins wrote complaints saying they were attempting to stop defendant for a civil infraction. Officer Doregan testified that the reason officers Howell and Jenkins were attempting to stop defendant was for a civil infraction.

Since officers Howell and Jenkins only knew of the civil infraction through information and belief they must have been relying on the "police team" concept

In United States of America v. Marls, Criminal no. 01-80332 (2002), it is clear that the "police team" concept only applies to felonies or misdemeanors punishable by imprisonment for more than 92 days.

It is illogical to say that the "police team" concept would apply to a civil infraction when it is inapplicable to misdemeanors punishable for 92 days or less. Obviously, the lower in severity the crime is, the less the "police team" concept is

applicable.

In Marks, Id., there is a similar situation in which an undercover officer relays the information that the defendant in that case has solicited her - a misdemeanor that is not punishable for more than 92 days.

In Marks, the United States Supreme Court ruled that the "police team" concept is inapplicable. In the case at hand it is inapplicable.

The Court of Appeals says direct observation isn't necessary in light of exigent circumstances. This did not present an exigent circumstances. This isn't defendant driving down Woodward Ave, a 10-lane divided highway. This is defendant pulling out of her driveway and cutting the wrong way down a largely deserted street - deserted because the street is so blighted that only a few of the houses are occupied because the rest are

burned down Defendant comes in contact with her neighbor across the street while she's backing across the street into the same neighbor's driveway. The neighbor isn't swerving to miss her, the neighbor is pulling in front of his house, defendant knows her neighbor is pulling in front of his house because he has slowed down and veered to the left in front of his house. Defendant knows that driving the wrong way down a one way is a civil infraction regardless of who is on the street, but the point is there is no exigent circumstance here.

The Court of Appeals cites, Whren V. United States, 517 US 806, as officer Donegan's observations justifying officers Howell and Jenkins stop. This seems to conflict with Harris, Id., but, Harris, Id., is concerning Michigan law.

Michigan law says a police officer may arrest without a warrant based

on information and belief only for a felony (MCLA 764.15A) and may issue a citation (and therefore stop to issue a citation) only when the circumstances of MCL 257.742(3) are met. Those circumstances are not met in this case.

The constitutional issue doesn't even need to be decided. It can be decided on Michigan Statute. "The Court of Appeals of Michigan should not address constitutional issues if the matter may be decided on nonconstitutional grounds." People v. Lonsby, 268 Mich. App. 375.

MCLA 764.15A says "only for a felony." Not," unless the information and belief comes from another police officer."

The Court of Appeals says (Section IX. Probable Cause) that ," In any event, even if officers Howell and Jenkins acted illegally, the defendant chose to flee..." "Thus, even if officers Howell and Jenkins did lack probable

cause, that has no bearing on defendant's guilt. The fact that the officers acted illegally and without probable cause absolutely does having bearing on defendant's case. The statute MCL 257.602 requires that an officer be in lawful performance of his duties. The statute says "lawful!" This word means something.

"A statute should be read, if at all possible, as to render no part of the statute surplusage or nugatory". People v. Pinkney, 2018 Mich. LEXIS 874, No. 154374.

That means a word is there for a reason.

"Words not defined in a statute should be given ordinary or common meaning." Smith v. United States, 508 U.S. 223.

"lawful, adj. Not contrary to law; permitted or recognized by law. < the police officer conducted a lawful search of the premises > see Legal." Black's Law Dictionary, 10th Ed.

The Court of Appeals rejects every

possible meaning of the word lawful. The Court says the word lawful doesn't mean that the officers were acting in accordance with their department's policies and procedures (Court of Appeals opinion, Section VIII. Newly Discovered Evidence). And the Court of Appeals rejects that the word lawful means to not be breaking the law (Court of Appeals opinion section IX. Probable Cause).

MCL 257.602 doesn't just require the officers to be performing their duties, it requires them to be "lawfully" peforming their duties. These officers were breaking MCL 764.15A; they were breaking MCL 257.603 (as discussed in defendants Supreme Court application, Issue 3, Prosecutorial Misconduct - witness list)

These officers were not performing their duties "lawfully". The first element of MCL 257.602 (see MI Crim JI 13.6a) is not met and the charges of fleeing and eluding causing death and causing injury must be vacated.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE ~~V~~ IX

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Due process rights were violated when officers Howell and Jenkins were not acting in official capacity during the traffic stop which is a violation of the U S Constitutional Amendment XIV and Michigan Const. 1963 Art. I § 17 and the charges of fleeing and eluding must be dismissed.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☑ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Possibly the "question presented" doesn't correctly identify the issue. The issue is:

A vehicle that is not marked identifying it as to whose authority it (its occupents) are acting under is not "officially" marked.

The language of MCL 257.602 says the vehicle must be officially marked. Defendant is asking the Court to examine the language of the statute and the word "officially." The statute intends that a citizen not have to guess as to whether the vehicle has authority to pull a citizen over.

A "semi-marked" vehicle that doesn't inform a citizen of whose authority it is acting under doesn't fall under the category of "officially marked" for the purpose of MCL 257.625

cont'd

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Keilie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

INSTRUCTIONS: In the sections below, write out those issues you want to raise in the Supreme Court that were raised in the Court of Appeals in either a brief prepared by your attorney or a supplemental brief that you prepared. To raise new issues, go to page 8.

ISSUES RAISED IN COURT OF APPEALS

ISSUE ~~I~~ X

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Defendant was denied her right to due process and effective assistance of counsel by the last filing of the witness list and trial counsel was ineffective by not objecting to this suprise witness

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Please see attached - cont'd

Issue IX - P.1 -
cont'd

Defendant is also asking the Court to give the words "officially" and "marked" meaning because a statute must be read, if at all possible, as to not render any part of it surplusage or nugatory.
In other words, those words are there for a reason.

The statute is somewhat ambiguous because it does not define what qualifies as "officially marked."

Although not binding, defendant asks the court to find informative and persuasive;

Commonwealth v. King, 1195 A.3d, finding that it is a police car's markings and not its lights that identify it as a police car.

Williams v. State, 200 Md. App 73, finding, "A vehicle appropriately marked as an official police vehicle," is not synonymous with a vehicle equipped with lights and sirens.

According to the rule of lenity, when a criminal statute is ambiguous, the ambiguity must be resolved in defendant's favor. United States v. R.L.C. 503 U.S. 291.

The court of Appeals found that because the vehicle's lights were activated and

because defendant increased speed, then the element of "adequately marked" was satisfied. But these are two separate and distinct elements of M Crim JI 13.69

First, that the officers were in uniform, in performance of lawful duties, and that any vehicle driven was adequately marked as a law enforcement officer.

Fourth, that defendant knew of that order.

The first element is not satisfied. The government bears the burden of proving each and every element of a crime beyond a reasonable doubt. U.S. v. Tarwater, 308 F.3d 494; People v. Hollins, 2008 Mich. App. LEXIS 854.

The prosecutor also argued this in closing arguments (T.T. 7-21-17 P.34) "Because, if she knew it was a police vehicle then the car was adequately marked," and then goes on to list the activation of the vehicles lights and the increased speed. But just because any vehicle flashes lights doesn't make it a police vehicle. The statute clearly wants a citizen to know both of a signal to stop and that the signal is coming from a law enforcement vehicle, which would be adequately marked.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

ISSUE ~~II~~ XI

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Defendant was denied due process of law and her right of confrontation where officer Duregan testified regarding the actions of charging officers Howell and Jenkins in violation of US. Constitution, Amendment Fourteen and Mich. Const. 1963, Art I § 17.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE ~~III~~ XII

A. Write the issue exactly as it was phrased in the Court of Appeals brief. Defendant's right to effective assistance of trial counsel was denied in violation of the U.S. Constitution, Sixth Amendment and Mich Const 1963, Art. I §§17, 20

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☑ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Defendant concedes on issue 12a

But as for 12b, defendant insists she has a right to defense on all charges. What good would be a Sixth Amendment right to counsel, "which is to be for his defense," if that right didn't include all the charges?

Defendant did not waive this right, trial counsel admitted throughout the Gunther hearing that he was only concerned with the murder 2 charge. Citings and transcript notations in brief on appeal & Standard 4

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

ISSUE XIII

A. Write the issue exactly as it was phrased in the Court of Appeals brief. It was not harmless error when defendant's right to due process and confrontation and due process we violated where the prosecutor failed to correct false testimony on a material issue in violation of U.S. Const.; Sixth and Fourteenth Amendments.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE XIV

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

MCL 257.625(8), MCL 257.625(4), MCL 626(4), MCL 257.626(5), and MCL 257.601d are unconstitutionally vague and overbroad on its face and as applied to Ms Stock

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☑ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE ~~III~~ XV

A. Write the issue exactly as it was phrased in the Court of Appeals brief. The trial court erred when it unreasonably limited the cross-examination of officer Bradley Donegan by informing defense attorney Longstreet that the fact that officers Howell and Jenkins were suspended could not be brought forth to the jury in violation of U.S. Const. Sixth Amendment, and Mich. Const. 1963 Art. 1 §20

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Cont'd

Issue # 15 (xv) - P.1

If the Court made an order that it couldn't be brought up that officers Howell and Jenkins were suspended or terminated for their role in the case, it violated the Confrontation Clause of the U.S. Const. Amend VI.

In Del. v. Van Arsdall, 475 U.S. 673 it was held: 1.) [t]he trial court's ruling, by cutting off all questioning about an event that the prosecution conceded had taken place and that a jury might have found furnished the witness a motive for favoring the prosecution in his testimony, had violated the accused's rights secured by the Confrontation Clause of Sixth Amendment, regardless of whether it had affected the outcome of the trial; but 2.) that the constitutionally improper denial of an accused's opportunity to impeach a witness for bias is not grounds for automatic reversal of a conviction but is subject to harmless error analysis.

In the present case it is the same situation. The court cut off all questioning about the discipline of officers Howell and Jenkins, an event the prosecution conceded had taken place.

Officers Howell, Jenkins, and Donegan were all part of a vice team. (T.T. 7-20-17, P.59, 60) A jury could reasonably conclude that officer Donegan had a motive to favor the prosecution in his testimony. Donegan

Could be angry that members of his team were suspended and terminated, and according to officers Howell and Jenkins, are in fear of criminal prosecution, due to the event that took place and involved the defendant.

The Court of Appeals says appellant failed to show how the officer's discipline is relevant. The bias of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony. Van Arsdall, Id.

This isn't really so much limitation of the subject, but cutting off all questioning about the subject, which is error regardless if it affected the outcome of the trial. Van Arsdall, Id. But even under the harmless error analysis, this error requires reversal.

In determining whether error was harmless the test is: (1) The importance of the witness's testimony in the prosecutor's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material point; (4) the extent of the cross-examination otherwise permitted, and, of course, (5) the overall strength in the prosecutor's case. Van Arsdall, Id

1) The importance of the witness's testimony
The testimony was absolutely critical to the prosecution's case. No one else testified as to why the other officers were even pulling defendant over (lawful performance), whether the officers were in uniform. Both of these are elements of fleeing and eluding (MS Crim. JI 13.6a(1)) Without this element satisfied, the verdict must be for acquittal.

2.) Whether testimony was cumulative
The testimony was not cumulative to any other testimony. The Court of Appeals said it would have been cumulative to the testimony of officers Howell and Jenkins had they testified. First, no one knows or can say what they would have testified to. Second, officers Howell and Jenkins didn't testify. The question isn't whether the testimony would have been cumulative to someone who didn't testify. The question is whether the testimony is cumulative to someone who did testify.

3.) The presence of absence of evidence corroborating or contradicting the testimony on material points
Donegan testified as to why these officers did what they did (pulling defendant over), and what they were (whether they were in uniform. (T.T 7-20-17, P.65, 66 respectively)

Issue # XV - P.4

Not one other person testified to this. Donegan implies through his testimony that it is defendant who was given an order to stop. No one else testified to this.

Donegan testified that defendant took off at a high rate of speed. (T.7-20-17, P.68.) Several witnesses testified that defendant was speeding (Squire Richardson, Michael Crummie) but it was Donegan that implied the reason she was speeding was because the officers attempted to pull her over.

The Court of Appeals looks at the corroborating testimony of Classie Butler, the passenger, as evidence that defendant knowingly increased her speed to elude capture. However, Ms. Butler also contradicts this same testimony. Ms. Butler testified that she does not remember anything that happened after 7 Mile Road and Woodward. All of the alleged event took place after 7 Mile and Woodward. (T.T. 7-20-17 P.53, 56.) So witness Butler is testifying that she doesn't remember anything concerning this event.

(All she remembers is speeding through the light at 7 Mile and Woodward, which didn't happen, as proven by the BP Gas Station video showing defendant's car stopped at the light at 7 Mile and Woodward.)

4. The extent of cross-examination otherwise permitted

No cross-examination on the subject of officers Howell and Jenkins was allowed concerning why they were suspended. The order isn't on record but if there was an order, it appears defense was prohibited from asking questions about Howell and Jenkins at all.

5. The overall strength of the prosecutor's case

The prosecutor presented ample evidence that there was an accident, that the man in the other involved vehicle died and that Ms. Butler was injured, and that defendant was driving. But none of this was really in dispute because the defendant never denied any of that. But a car accident causing death and injury isn't necessarily a crime. Donegan testified to matters concerning fleeing and eluding. Since officers Howell and Jenkins asserted their Fifth Amendment privelege, without the testimony of officer Donegan, there is no case. When analyzing the suffiency of evidence (V. Sufficiency of Evidence, COA opinion) the Court points to evidence of multiple witnesses observing the lights and sirens during and after the chase, and that a video was shown to the jury so

that the jury could see (and hear) for themselves whether the lights and sirens were activated.
First, the video was shown without audio, and the jury obviously couldn't see sirens*
Second, only officer Donegan said sirens were activated. Every other witness including Classie Butler said there were no sirens.
Third, even if there were lights and sirens, without the testimony of Donegan there is still an element missing.
Without all the elements satisfied there is insufficient evidence.

* There is lack of any audio referred to in the entire trial transcript

The cutting off all questioning of Donegan by an order preventing him from "bringing it up" was constitutional error. It could not possibly have been harmless error. The fleeing and eluding must be reversed.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont).

Kelle Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

NEW ISSUE INSTRUCTIONS: If you want the Supreme Court to look at errors that were not raised in the Court of Appeals, check **Yes** in the checkbox below and answer parts **A, B,** and **C** for each new issue you raise. There are pages provided for 2 new issues. You may include more pages to raise additional new issues. If you do not have new issues, go to the Relief Requested section on page 10.

☒ YES, I want the Supreme Court to consider the additional grounds for relief contained in the following issues. The issues were not raised in my Court of Appeals brief.

NEW ISSUE I:

A. Write the new issue you want the Court to consider: The prosecutor knowingly presented false evidence in violation of Const. Amend XIV, Due Process Clause, when allowed officer Donegan to testify that the vehicle officers Howell and Jenkins were driving was semi-marked when he knew that according to the City of Detroit, the vehicle was an unmarked vehicle

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☑ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws, or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.

cont'd

New Issue #1 -P.1

The prosecutor knowingly allowed officer Donegan to testify falsely when he testified that the car driven by officers Howell and Jenkins was a semi-marked police vehicle when he knew it to be an unmarked vehicle.
Alternatively, officer Donegan knew of the falsity and, "Typically, false testimony or evidence introduced by a law enforcement officer is imputed to the state." See Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L.Ed. 2d. 490 (1995).

U.S Const. Amend. XIV cannot tolerate a state criminal conviction obtained by knowing use of false testimony. Burks v. Egeler, 512 F. 2d. 221

Failure to correct false testimony requires reversal if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. People v. Carter, 197 Mich. App. 550, 568, 496 N.W. 2d 336; 197 Mich. App. 550, 496 N.W. 2d 336 (1992), citing Giglio, 405 U.S. at 154; Wiese, 425 Mich. at 454

officer Donegan testified that he would describe the vehicle as semi-marked (T.T. P. 66, 7-20-17.) In his closing arguments the prosecutor calls the vehicle semi-marked (T.T. P. 34, 7-21-17) officer Donegan is a Detroit Police officer. He knows that his vehicle is unmarked

according to the Detroit Police Department manual. (Appendix 2)

Because this is a matter of ineffective assistance of counsel, and in the interest of avoiding a miscarriage of justice, defendant requests the Court to expand the record pursuant to MCR 7.316(A)(4), to include pages of DPD manual.

This cannot be presented as new evidence because it was attainable by the trial counsel and it should have been shown to the jury. It was relevant as discrediting Donegan. It was relevant as a defense.

303.2-3.14 describes a Semi-Marked Vehicle
303.2-3.15 describes an Unmarked Vehicle.

It describes that while both vehicles may be equipped with front and back dash lights, a semi-marked vehicle would be "a vehicle that is identifiable as an official police vehicle with markings identifying the vehicle as such. The markings may be in particle, but the vehicle must be marked in some way identifying it as an official Detroit Police Department Vehicle.

While an unmarked vehicle may have the same lights, an unmarked vehicle is a vehicle that has no markings identifying it as an official police vehicle.

This confirms appellee's Standard 4 argument (issue IX) that the vehicle must have markings indicating under color of what authority is this vehicle and its occupant officers acting under.

The phrase "in particle" in this section means: particle - a small, individual section of written matter; a clause; an article in a written document
So they vehicle could have, for example, "Det. Pol." but a semi-marked vehicle must have some writing.

First, officer Donegan says Howell and Jenkins vehicle is marked. Lights and sirens. Then he says it's a solid black Crown Vic with lights in the grill and rear mirror. Theres no markings on this car. (T.T. 7-20-17, P.65)
Also, the vehicle is shown on video as being solid black, no markings.
Lila Goad said the car was, "black, no markings."
No one in the whole trial said the car had markings. It is an unmarked car. yet the prosecution still refers to it as semi-marked. officer Donegan knows it is an unmarked car. He's been a Detroit Police officer for seventeen years.

The prosecutor presented false evidence

that the vehicle officers Howell and Jenkins were driving was semi-marked when he knew it to be unmarked. This isn't just conflicting testimony. It's false evidence. This isn't, one person says the cars black and another says it's dark blue. This is the prosecution avoiding the jury knowing that this is an unmarked car

Had the jury known the car to be unmarked, a different outcome is not just reasonably likely, it is highly likely.

The test for false evidence is (1) the evidere the prosecution presented was false (2) the prosecution knew it was false, and (3) the false evidence was material. Workman v. Bell, 178 F.3d 759; Rosencrantz v. Lafler, 568 F. 3d 577

The falsehood is deemed to be material "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Widmer v. Warden, 2017 U.S. Dist. LEXIS 49915, Case No. 1:14-CV-303; Napue v. Illinois, 360 U.S. 264, 269 3. L. Ed 2d 1217, 79 S. Ct. 1173 (1955).

If the jury was presented the truth, that the vehicle was unmarked, there is more than a reasonable likelihood that the jury would have acquitted for lack of proof on the first element of Fleeing and eluding, that the vehicle be adequately marked.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont).

Kellie Stock, Appellant Court of Appeals No. 340541
(Print your name)

NEW ISSUE II:

A. Write the new issue you want the Court to consider: The prosecutor presented false evidence when it only presented the court and the jury with evidence of cocaine in toxicology when he knew that the evidence only showed presence of metabolite and not cocaine, in violation of Due Process Clause, Const. Amend XIV.

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws, or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.

cont'd

New Issue #2. P.1

The prosecutor presented evidence of cocaine metabolite as if it was actual cocaine. This is false and misleading evidence. Presenting false evidence violates the Due Process Clause of Constitutional Amendment Fourteen. It is fundamentally unfair to present false evidence.

During trial the prosecutor elicited false testimony when officer in charge, Richard Schwab, testified that the toxicology report indicated a presence of cocaine when it was actually a cocaine metabolite. (T.T. 7-20-17, P. 161)

Prosecutor Degrazia: All right. Specifically what narcotics do you see there?

Schwab: It's gonna be, the top one is opiates. And the second one is gonna be cocaine and metabolite.

Then the prosecutor actually solicits Schwab to change his answer: (T.T. 7-20-17, P.161.)

Degrazia: At the bottom. You're saying methadone?

Schwab: I'm sorry. Yes. And down below it's methadone.

The one and only time anyone ever said

the word "metabolite," it was corrected to "methadone."

The toxicology said both words. The toxicology showed a positive result for both metabolite and methadone. But what it did not show a positive result for is cocaine. The prosecutor may have been free to elicit that the results also show positive for methadone, but the prosecutor was not free to lead the jury to believe that it did not say "metabolite" at all because it instead said "methadone."

The Court of Appeals, in setions II, Ineffective Assistance of Counsel, and V, Sufficiency of Evidence, says that cocaine can be inferred from cocaine metabolites. But a defendant has a Sixth Amendment right to a trial by jury, so it's not for the Court of Appeals to infer. It is for the jury to infer, and the jury could not have inferred it because it was never presented evidence of metabolite from which to infer that.

The trial attorney was ineffective for not objecting. Instead, he just elicits more of the same. (T.T. 7-20-17, P. 16)

Trial attorney Longstreet: All right. Sir, you've indicated that this medical issue is positive for cocaine, correct?

Schwab: That's what it states, yes.

But that isn't what it states. And the trial attorney should have corrected that.

In Section II, of the Court of Appeals opinion the Court points out that at the Ginther hearing, the trial court determined that argument regarding metabolites would not have affected the outcome of the trial. This is like presenting evidence of poisoned Pepsi and then saying, Any argument regarding plain Pepsi and poisoned Pepsi wouldn't have made a difference at a trial for murder by poison. One is cocaine. The other is not.
The Court of Appeals calls appellant's Feezel argument both "a fair extrapolation" and "extrapolating Feezel far beyond its scope." Under section II, the Court of Appeals says, "We are not addressing in this matter whether cocaine metabolites are themselves scheduled substances, which we presume under Feezel they are not, but rather whether they are probative of the presence of cocaine."

Certainly, metabolites are probative of the presence of cocaine. But it is irrelevant what metabolites are probative of because, again, the jury was not presented evidence of metabolites.

The Court of Appeals says that they presume under Feezel cocaine metabolites are not a scheduled substance and then directly goes into an opinion why this case is distinguishable. The court says it "lacks the kind of expert testimony and evidence that was provided in Feezel. If that is the case then the trial attorney was ineffective for not presenting such evidence. But, like the dissent says, that's actually shifting the burden of proof to defendant. In any case, this kind of evidence was available because in Layne v. Stewart, 2017 U.S. Dist. LEXIS 33481, it was said, "The medical examiner testified that drugs found in urine have exited a person's system and do not affect the person." While substances in the bloodstream may be active, substances in the urine are spent.

Whether or not under Feezel a cocaine metabolite is a scheduled substance, it is still improper to represent that a substance is something it isn't. It is false evidence. It is a deliberate

deception.

The deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. This rule applies to both the solicitation of false testimony and the knowing aquiescence in false testimony. In order to prove this claim, a defendant must show (1) the evidence the prosecution presented was false, (2) the prosecution knew it was false, and (3) the false evidence was material. Workman v. Bell, 178 F.3d 759; Rosencrantz v. Lafler, 568 F.3d 577; Napue v. Illinois, 360 U.S. 264, 269 3 L.Ed 2d 1217, 79 S.Ct. 1173 (1955)

The falsehood is deemed to be material "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Agurs, 427 US at 103.

In the case at hand, (1) the evidence was false. It was not what the prosecution purported it to be; (2) the prosecution knew of the falsity because he can see for himself that the toxicology says metabolite and when the witness tries to say what the report actually says, he actually has the witness change his answer. Furthermore, the witness is a police officer. "Typically, false testimony or evidence introduced by a law enforcement

officer is imputed to the state," See Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); (3) the false evidence was material because it affected the outcome of the jury. It must have because no other evidence was presented to satisfy the element of "any amount of a Schedule 1 substance or cocaine."

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont).

Kellie Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

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☐ YES, I want the Supreme Court to consider the additional grounds for relief contained in the following issues. The issues were not raised in my Court of Appeals brief.

NEW ISSUE III:

A. Write the new issue you want the Court to consider: The certificate admitted to authenticate the toxicology report violated the Confrontation clause of Const. Amend. VI.

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
☐ 2. The issue raises a legal principle that is very important to Michigan law.
☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws, or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.

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New Issue # 3 - P.1

The certificate admitted to authenticate the toxicology report violated the Confrontation Clause of Constitutional Amendment VI.

A certificate was admitted to authenticate the toxicology. This certificate, although requested by defense (to review), was admitted by the prosecution. The certificates were admitted to prove the truth of the matter asserted; that the toxicology was authentic and that it was defendant's toxicology.

Because the State asked the hospital for the certificate to be made to show it was authentic, the certificate was testimonial and therefore fell within the core class of testimonial statements covered by the Confrontation Clause. Melendez-Diaz v. Mass., 557 U.S. 305, "Documents kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. Fed. R. Evid. 803(6). (MRE 803(6)). But that is not the case if the regularly conducted business is the production of evidence for use at trial.

In Melendez-Diaz, Id., the U.S. Supreme

Court held that the certificates were affidavits which fell within the core class of testimonial statements covered by the Confrontation Clause, and they were made under circumstances which would have led an objective witness reasonably to believe that they were made for use in a criminal trial. And, although petitioner could have subpoenaed the analyts, that right was not a substitute for his right to confront them.

During the Gunther hearing, the trial attorney indicated that he wasn't concerned with the reliability of the evidence, or the chain of custody (Gunther hearing, P43). But at trial, he intended to challenge the chain of custody because the toxicology was in the name of "Mississippi." Further, the toxicology said right on it, "Not for chain of custody testing for use in a criminal prosecution." (Gunther hearing, P24; the toxicology report in the record).

So, there's a toxicology in the name "Mississippi Unknown," that says right on it that it's not intended for chain of custody, but

the trial attorney doesn't challenge that. He said he had no reason to challenge the chain of custody because they were hospital records, not government actors such as Michigan State Police. (Gunther hearing, p43) But it is the government, the prosecution, who wants the certificate. The hospital made the toxicology report for its own purposes, but not the certificate. The hospital didn't ask for authentication, the government did.

In any case, it doesn't matter if the trial attorney found the evidence reliable. The Confrontation Clause insists that the reliability of evidence be tested in a particular manner; cross-examination.

"The Confrontation Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but reliability be assessed in a particular manner; by testing in the crucible of cross-examination. Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with a jury trial because a defendant is obviously guilty. This is not what

the Sixth Amendment prescribes. Melendez-Diaz, Id.

"It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence, but what testimony is introduced must (if defendant objects) be introduced live. Melendez-Diaz, Id. Trial counsel did not object when the court reversed itself midtrial and decided to let in the toxicology with defendant's name, the toxicology with the name, "Mississippi," and the certificate without anyone from Henry Ford Hospital to testify to the certificate.

In order to fully understand what happened with the toxicology, two parts of the transcripts must be read.
T.T. 7-19-17, PP.82-90, is where the court rules the toxicologies, both of them, inadmissible.
T.T. 7-20-17, PP. 4-7, is where the court reverses itself and allows into evidence both toxicologies and a certificate.

"It was the prosecutor's responsibility to have someone from Henry Ford Hospital

New Issue

testify once he decided to admit the certificate. Melendez-Diaz, Id.

There was a very obvious problem with the chain of custody. Trial counsel was ineffective.

This prejudiced defendant because there is no other proof of a Schedule 1 substance or the Schedule 2 substance cocaine, as is needed to convict on MCL 257.625 (8), (4) and (5).

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont).

Kellie Nichole Stock, Appellant Court of Appeals No. 340541

(Print your name)

NEW ISSUE ~~III~~ IV

A. Write the new issue you want the Court to consider: officer Donegan's testimony was surrogate testimony in violation of Const. Amend. VI.

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws, or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.

Cont'd

New Issue # IV

Under section V. Sufficiency of the evidence, the Court of Appeals says, "In her Standard 4 brief, defendant also presents the bare assertion, unsupported by any argument, that she was denied her constitutional rights of due process and confrontation when officer Donegan testified regarding the actions of officer Howell and officer Jenkins.

officer Donegan's testimony was surrogate testimony. Donegan testified to what the other officers felt and thought. T.T. 7-20-17, P. 70. "They just kinda dropped back due to the heavy flow of traffic. It wasn't worth it." Donegan testified as to why these officers attempted to stop the vehicle. TT. 7-20-17, P. 74-76. True, Donegan testified about what he claims to have observed, but he also testified about the reasons the officers did or did not do certain things.

Surrogate testimony does not satisfy the demands of the Sixth Amendment Confrontation Clause.

Officers Howell and Jenkins made a complaint. Donegan did not. Howell and Jenkins are the accusers. Not Donegan. Howell and Jenkins are the officers named in the Information.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

[redacted] NEW ISSUE V:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

The reckless driving charges are now based on factors included in a vacated sentence.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☑ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Cont'd

New Issue V

The reckless driving charges are now based on factors that are shown to be false. The jury was presented evidence that apparently led them to believe that the defendant's license was suspended, revoked or denied. The jury was led to believe that defendant had done something for which she had been deemed unfit to drive. (See Acosta-Baustista, 296 Mich. App. 404 (2012)) This may be one of the factors by which the jury found defendant to be recklessly.

Defendant finds no caselaw in support but instead relies on the Due Process clause, Const. Amend. Fourteen. It is fundamentally unfair to allow a conviction to stand knowing it's based on false information.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stock, Appellant Court of Appeals No. 340541
(Print your name)

~~ISSUE~~ NEW ISSUE VI:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

Cumulative trial error.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☐ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Cont'd

New Issue VI

Cumulative Trial Error

The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not warrant reversal. People v. Daoust, Mich. App. 1, 16; 577 NW2d 179 (1998)

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Kellie Nichole Stark, Appellant Court of Appeals No. 340541
(Print your name)

ISSUE: NEW ISSUE VII:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

Sentencing Issues- based on inaccurate information

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle that is very important to Michigan law.
- ☑ 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- ☑ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

Cont'd

New Issue VII

Sentencing

OV13

OV 13 was scored at 25 points. It should have been scored at 0 points.

In People v. Smith, De, 2003 Mich. App. LEXIS 497, No. 229137, the Court distinguished that case from People v. Harmon, 248 Mich. App. 522, 532; 640 NW2d 314 (2001), because the use of the term "pattern" evinces an intention that it is repeated felonious conduct that should be considered and defendant's actions stemmed from one incident.

Here, the charges all stemmed from one incident also. OV 13 is improperly scored

Defendant realizes that does not change her standing in the class B grid. But in the event that the charges of fleeing and eluding and operating with any amount of schedule 1 substance causing death and serious injury, are vacated, this would change OV's 18 and 19 to 0, putting defendant at 70 points, which would not only change the grid, but put her sentence outside of that grid.

New Issue

Inaccurate Information

This sentence is based on inaccurate information. The Court of Appeals vacated convictions for MCL 257.904.

In People v. Jackson, 487 Mich. 783, the Court held that remands for resentencing were governed by MCL 769.34, which required cases to be remanded when the sentence was based on inaccurate information, which in Jackson, Id., were vacated convictions.
Defendant does not misread Jackson and does realize that in Jackson, Id., the vacated convictions also resulted in a change of the guideline scores. However, MCL. 34 requires that a sentencing remand is necessary if a sentence is based on erroneously scored guidelines or inaccurate information. Both are not required, just one or the other.

Defendant is also asking the Court to consider the words, "...And any other relief this court deems appropriate," which is requested in her brief on appeal and Standard 4, as a request for remand for resentencing, to meet the requirements of MCL 769.34 (10), which mandate that a request for remand be made

New Issue

In a proper motion filed with the Court of Appeals. Jackson, Id.
Like in Jackson, the resentencing matter was not yet ripe for review because the convictions were not yet vacated.

The Court of Appeals could have remanded for resentencing pursuant to MCR 7.216 (A)(7), which allows the Court to grant different or further relief as it deems just.

Defendant asks for remand for resentencing for the already vacated charges, and if the Court were to vacate either the fleeing charges or DVI charges, then resentencing would become even more necessary because the court specifically relied on these factors in imposing sentence. (Sentencing Transcripts, 8-7-17, PP. 19, 20).

The trial court also relied on another inaccurate factor (Sentencing Transcripts, 8-7-17, P.20). That the defendant was in a stolen vehicle. The Court specifically states that the following is some of the factors on which he is relying for imposing sentence. (Sentencing Transcripts, 8-7-17, P.19). This is inaccurate information. In

New Issue

discovery was a police report or investigation into the matter by the Royal Oak (MI) police department. The investigation reveals that a Janet Moldovan filed a false police report stating the car had been stolen and had never been in the parking lot on the day in question. Defendant was loaned the vehicle from Ms. Moldovan's son Augustine.

When a sentencing decision is based on inaccurate information, the proper remedy is resentencing. People v. Haugh, 435 Mich 876; 458 NW2d 897 (1990); People v. Daniels, 192 Mich. App. 658, 675; 482 NW2d 176 (1991) (Resentencing required when inaccurate information is relied on at sentencing or where trial court fails to resolve a factual dispute unless the issue is of "no moment" to the decision)

The inaccurate information is especially important in this case because defendant was sentenced to the very last day under the guidelines. The appropriate cell grid was 62-228 months and defendant was sentenced to 228 months minimum.

Appendix 1

REGISTER OF ACTIONS

CASE NO. 17-003509-01-FC

PARTY INFORMATION

		Lead Attorneys
Appellate Attorney	Kierpaul, Ian	
Defendant	Stock, Kellie Nichole	Charles Oliver Longstreet *Court Appointed* (313) 288-0103(W)
Plaintiff	State of Michigan	Deborah K. Blair (313) 224-8861(W)

CHARGE INFORMATION

Charges: Stock, Kellie Nichole	Statute	Level	Date
1. Homicide - Murder - Second Degree	750/317	.	03/20/2017
2. RECKLESS DRIVING CAUSING DEATH	257/6264	.	03/20/2017
3. Operating - Under the Influence Causing Death	257/6254	.	03/20/2017
4. Operating - License Suspended, Revoked, Denied -causing Death	257/9044	.	03/20/2017
5. Police Officer - Fleeing - First Degree -vehicle Code	257/602A5	.	03/20/2017
6. Police Officer - Fleeing - Second Degree -vehicle Code	257/602A4-A	.	03/20/2017
7. RECK DR. CAUSE SER. IMPARI OF BODY FUNCT	257/6263	.	03/20/2017
8. Operating - Under the Influence Causing Serious Injury	257/6255-A	.	03/20/2017
9. Operating - License Suspended, Revoked, Denied -causing Serious Injury	257/9045	.	03/20/2017

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
1. Homicide - Murder - Second Degree
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
2. RECKLESS DRIVING CAUSING DEATH
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
3. Operating - Under the Influence Causing Death
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
4. Operating - License Suspended, Revoked, Denied -causing Death
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
5. Police Officer - Fleeing - First Degree -vehicle Code
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
6. Police Officer - Fleeing - Second Degree -vehicle Code
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
7. RECK DR. CAUSE SER. IMPARI OF BODY FUNCT
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
8. Operating - Under the Influence Causing Serious Injury
Defendant Stand Mute: Plea of Not Guilty Entered by Court

03/24/2017 **Plea** (Judicial Officer: White, Dawn)
9. Operating - License Suspended, Revoked, Denied -causing Serious Injury
Defendant Stand Mute: Plea of Not Guilty Entered by Court

08/07/2017 **Disposition** (Judicial Officer: Slavens, Mark T.)
1. Homicide - Murder - Second Degree
Found Guilty by Jury
2. RECKLESS DRIVING CAUSING DEATH
Found Guilty by Jury

3. Operating - Under the Influence Causing Death
   Found Guilty by Jury
4. Operating - License Suspended, Revoked, Denied -causing Death
   Found Guilty by Jury
5. Police Officer - Fleeing - First Degree -vehicle Code
   Found Guilty by Jury
6. Police Officer - Fleeing - Second Degree -vehicle Code
   Found Guilty by Jury
7. RECK DR. CAUSE SER. IMPARI OF BODY FUNCT
   Found Guilty by Jury
8. Operating - Under the Influence Causing Serious Injury
   Found Guilty by Jury
9. Operating - License Suspended, Revoked, Denied -causing Serious Injury
   Found Guilty by Jury

08/07/2017 **Amended Disposition** (Judicial Officer: Slavens, Mark T.) Reason: Clerical Error

1. Homicide - Murder - Second Degree
   Not Guilty by Jury
2. RECKLESS DRIVING CAUSING DEATH
   Found Guilty by Jury
3. Operating - Under the Influence Causing Death
   Found Guilty by Jury
4. Operating - License Suspended, Revoked, Denied -causing Death
   Found Guilty by Jury
5. Police Officer - Fleeing - First Degree -vehicle Code
   Found Guilty by Jury
6. Police Officer - Fleeing - Second Degree -vehicle Code
   Found Guilty by Jury
7. RECK DR. CAUSE SER. IMPARI OF BODY FUNCT
   Found Guilty by Jury
8. Operating - Under the Influence Causing Serious Injury
   Found Guilty by Jury
9. Operating - License Suspended, Revoked, Denied -causing Serious Injury
   Found Guilty by Jury

08/07/2017 **Sentence** (Judicial Officer: Slavens, Mark T.)

2. RECKLESS DRIVING CAUSING DEATH
   Fee Totals:

- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00

   State Confinement:
   Agency: Michigan Department of Corrections
   Effective 08/07/2017
   Term: 19 Yr to 50 Yr
   Credit for Time Served: 0 Days
   Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT

3. Operating - Under the Influence Causing Death
   Fee Totals:

- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00

Court Costs	$0.00
Fee Totals $	$2,574.00

State Confinement:
Agency: Michigan Department of Corrections
Effective 08/07/2017
Term: 19 Yr to 50 Yr
Credit for Time Served: 0 Days
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT

4. Operating - License Suspended, Revoked, Denied -causing Death

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00

State Confinement:
Agency: Michigan Department of Corrections
Effective 08/07/2017
Term: 19 Yr to 50 Yr
Credit for Time Served: 0 Days
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT

5. Police Officer - Fleeing - First Degree -vehicle Code

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00

State Confinement:
Agency: Michigan Department of Corrections
Effective 08/07/2017
Term: 19 Yr to 50 Yr
Credit for Time Served: 0 Days
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT

6. Police Officer - Fleeing - Second Degree -vehicle Code

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00

Fee Totals $	$2,574.00
State Confinement:	
Agency: Michigan Department of Corrections	
Effective 08/07/2017	
Term: 19 Yr to 50 Yr	
Credit for Time Served: 0 Days	
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT	

7. RECK DR. CAUSE SER. IMPARI OF BODY FUNCT

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00
State Confinement:	
Agency: Michigan Department of Corrections	
Effective 08/07/2017	
Term: 19 Yr to 50 Yr	
Credit for Time Served: 0 Days	
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT	

8. Operating - Under the Influence Causing Serious Injury

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00
State Confinement:	
Agency: Michigan Department of Corrections	
Effective 08/07/2017	
Term: 19 Yr to 50 Yr	
Credit for Time Served: 0 Days	
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT	

9. Operating - License Suspended, Revoked, Denied -causing Serious Injury

Fee Totals:	
- Crime Victims Fee - (FEL)	$130.00
- State Minimum Cost (FEL)	$544.00
Attorney Fees	$600.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Attorney Fees	$0.00
Court Costs	$1,300.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Court Costs	$0.00
Fee Totals $	$2,574.00

12/19/2017	Notice of Transcript Filed
	Vol./Book 1 14 pages
02/13/2018	Motion For A New Trial
02/13/2018	Proof of Service, Filed
02/14/2018	Motion
02/20/2018	Order (Judicial Officer: Slavens, Mark T.)
02/21/2018	Praecipe, Filed (Judicial Officer: Slavens, Mark T.)
03/01/2018	Miscellaneous, Filed
03/01/2018	Miscellaneous, Filed
03/01/2018	Miscellaneous, Filed
03/01/2018	Proof of Service, Filed
03/01/2018	Proof of Service, Filed
03/01/2018	Supplemental Brief Filed
03/02/2018	**Motion Hearing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
	Parties Present
	Result: Held
03/02/2018	**Motion**
03/23/2018	**Review Date** (9:00 AM) (Judicial Officer Slavens, Mark T.)
	Parties Present
	Result: Held
05/08/2018	Miscellaneous, Filed
05/08/2018	Miscellaneous, Filed
05/08/2018	Proof of Service, Filed
05/11/2018	**Evidentiary Hearing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
	Parties Present
	Result: Adjourned at the Request of the Court
07/13/2018	**Evidentiary Hearing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
	Parties Present
	Result: Adjourned at the Request of the Defense
08/24/2018	**Evidentiary Hearing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
	Parties Present
	Result: Held
08/24/2018	**Motion For A New Trial**
08/27/2018	**Order For Production Of Transcript**
08/27/2018	**Stenographer Certificate Required**
08/27/2018	**Order For Production Of Transcript**
08/28/2018	Order For Production Of Transcript
08/28/2018	**Stenographer Certificate Required**
08/30/2018	**Stenographer Certificate Required**
09/04/2018	**Stenographers Certificate Filed**
09/13/2018	**Stenographers Certificate Filed**
09/13/2018	**Stenographers Certificate Filed**
09/26/2018	Notice of Transcript Filed
	Vol./Book 3 20 pages
09/26/2018	Notice of Transcript Filed
	Vol./Book 1 14 pages
09/28/2018	Notice of Transcript Filed
	Vol./Book 1 119 pages
02/13/2019	Documents Prior to eFiling
10/15/2019	Motion To Pay Extraordinary Fees
10/15/2019	Proof of Service, Filed
12/30/2019	Miscellaneous, Filed
12/30/2019	Miscellaneous, Filed

FINANCIAL INFORMATION

	Defendant Stock, Kellie Nichole			
	Total Financial Assessment			2,954.00
	Total Payments and Credits			755.12
	Balance Due as of 01/12/2020			**2,198.88**
08/07/2017	Transaction Assessment			2,574.00
10/03/2017	Transaction Assessment			380.00
06/19/2018	Mail Payment	Receipt # 2018-47598	Stock, Kellie Nichole	(122.02)
12/18/2018	Mail Payment	Receipt # 2018-103563	Stock, Kellie Nichole	(138.48)
03/18/2019	Mail Payment	Receipt # 2019-22084	Stock, Kellie Nichole	(102.12)
05/08/2019	Mail Payment	Receipt # 2019-38546	Stock, Kellie Nichole	(181.06)
08/02/2019	Mail Payment	Receipt # 2019-61981	Stock, Kellie Nichole	(109.06)
09/23/2019	Mail Payment	Receipt # 2019-76607	Stock, Kellie Nichole	(102.38)

State Confinement:
Agency: Michigan Department of Corrections
Effective 08/07/2017
Term: 19 Yr to 50 Yr
Credit for Time Served: 0 Days
Concurrent, Comment: ALL COUNTS TO RUN CONCURRENT

OTHER EVENTS AND HEARINGS

03/23/2017 **Recommendation for Warrant**
03/23/2017 **Warrant Signed**
03/24/2017 **Arraignment on Warrant** (9:00 AM) (Judicial Officer White, Dawn)
Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
04/03/2017 **Arraignment on Warrant** (9:00 AM) (Judicial Officer Anderson, Charles W., III)
Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
04/05/2017 **Pre Exam Hearing** (9:00 AM) (Judicial Officer King, Kenneth J)
Result: Adjourned at the Request of the Court
04/12/2017 **Preliminary Examination** (9:00 AM) (Judicial Officer King, Kenneth J)
Result: Adjourned at the Request of the Court
04/17/2017 **Pre Exam Hearing** (9:00 AM) (Judicial Officer King, Kenneth J)
Result: Held
04/24/2017 **Preliminary Examination** (9:00 AM) (Judicial Officer King, Kenneth J)
Result: Adjourned at the Request of the Court
04/26/2017 **Preliminary Examination** (9:00 AM) (Judicial Officer King, Kenneth J)
Result: Waived/Bound Over
04/26/2017 **Bound Over**
05/03/2017 **Arraignment On Information** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: Held
05/03/2017 **Order** (Judicial Officer: Slavens, Mark T.)
05/24/2017 Motion To Withdraw As Attorney
05/26/2017 Praecipe, Filed (Judicial Officer: Slavens, Mark T.)
05/26/2017 Praecipe, Filed (Judicial Officer: Slavens, Mark T.)
05/30/2017 **Motion Hearing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: Held
05/30/2017 **Motion To Withdraw As Attorney**
05/30/2017 **Heard And Granted - Order Signed and Filed** (Judicial Officer: Slavens, Mark T.)
06/22/2017 **Final Conference** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
06/20/2017 Reset by Court to 06/22/2017
Result: Held
07/06/2017 Witness List, Filed
07/19/2017 **Jury Trial** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
07/17/2017 Reset by Court to 07/18/2017
07/18/2017 Reset by Court to 07/19/2017
Result: In Progress
07/20/2017 **Jury Trial in Progress** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: In Progress
07/21/2017 **Jury Trial in Progress** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: In Progress
07/24/2017 **Jury Trial in Progress** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: Held
07/24/2017 **Found Guilty By Jury**
08/07/2017 **Sentencing** (9:00 AM) (Judicial Officer Slavens, Mark T.)
Parties Present
Result: Held
08/07/2017 **Sentenced to Prison Order Signed and Filed**
09/22/2017 **Order For Production Of Trial Transcript**
09/22/2017 **Stenographer Certificate Required**
09/22/2017 **Order For Production Of Trial Transcript**
09/22/2017 **Stenographer Certificate Required**
09/22/2017 **Order For Production Of Sentencing Transcript**
09/22/2017 **Stenographer Certificate Required**
09/22/2017 **Appointment for Claim of Appeal (Circuit)**
09/27/2017 **Stenographers Certificate Filed**
10/02/2017 **Stenographers Certificate Filed**
10/18/2017 Notice of Transcript Filed
Vol./Book 1 24 pages
10/26/2017 **Stenographers Certificate Filed**
12/07/2017 Notice of Transcript Filed
Vol./Book 6 493 pages

Appendix 2

From : Pamela Thurman, CustomerID: 19389576
To : KELLIE STOCK, ID: 260350
Date : 2/4/2020 6:42:39 AM EST, Letter ID: 731220159
Location : WHV
Housing : HU G B WING40BBOTB
pre-paid stamp included

PLANNING AND DEPLOYMENT

TRANSMITTAL OF WRITTEN DIRECTIVE

RECEIVED JUN - 8 2017 BOARD OF POLICE COMMISSIONERS

FOR SIGNATURE OF: James E. Craig, Chief of Police

TYPE OF DIRECTIVE: Manual Directive 303.2

SUBJECT: VEHICULAR PURSUITS

ORIGINATED OR REQUESTED BY: Planning and Deployment

APPROVALS OR COMMENTS:
The above referenced was reviewed by Risk Management. Revisions are marked in strikethroughs, bold, and italics.

APPROVED

APPROVED JUN 8 2017 POLICE LEGAL ADVISOR

AFTER THE DIRECTIVE IS APPROVED AND SIGNED, PLEASE RETURN TO PLANNING AND DEPLOYMENT.
1301 Third Avenue, 7th Floor, Detroit MI 48226

303.2 - 3.14 *Semi-Marked Vehicle*
A four (4) wheeled vehicle that is equipped with permanent flasher type lights to the front, or flashing, oscillating or rotating lights mounted in the front and rear window area instead of permanent top mounted light bar or beacons. The vehicle is also equipped with a siren. A semi-marked vehicle is a vehicle that is identifiable as an official police vehicle with markings identifying the vehicle as such. The marking(s) may be in particle, but the vehicle must be marked in some way identifying it as an official Detroit Police Department vehicle.

303.2 - 3.15 *Unmarked Vehicle*
A four (4) wheeled vehicle that may or may not be equipped with flasher type lights, flashing, oscillating or rotating lights mounted in the front and rear window area. The vehicle may or may not be equipped with a siren. An unmarked vehicle is a vehicle that has no markings identifying it as an official police vehicle.

303.2 - 3.16 *Violent Felony*
For the purposes of this directive, a violent felony is defined as murder, attempted murder, robbery, carjacking, kidnapping, a felonious assault resulting in injury to the victim, criminal sexual conduct 1st and 3rd degrees, and home invasion 1st degree.

303.2 - 4 PROCEDURES

1. Resisting apprehension may include, but is not limited to, maintaining or increasing speed, disobeying traffic laws, or making some other overt action intended to avoid arrest. Routine traffic stops, or other instances in which officers *Department members* activate their emergency lights and sirens and the vehicle operator complies by coming to a stop in a reasonably short distance, will not be considered a vehicle pursuit.
2. Officers attempting to stop a vehicle shall activate their oscillating, flashing, or rotating roof *emergency* lights, as well as headlamps, and direct the driver by visual or audible signal to bring the car to a stop. If the attempt to stop the vehicle fails, officers shall activate the headlights and lamps of their vehicle prior to initiating a pursuit. Officers shall activate their oscillating, flashing, or rotating roof lights and/or siren while attempting to catch up to a suspect vehicle.

303.2 - 5 Pursuit Initiation and/or Continuation Criteria

A pursuit shall only be initiated for the following:

1. If members have probable cause to believe a violent felony (as listed above) has been, is being, or is about to be, committed. The crime of fleeing and eluding alone cannot be the felony on which the chase is based.
2. If members observe offenses wherein the conduct of the offense poses such an imminent danger to the public at large that the anticipated hazards of pursuit are outweighed by the danger posed by allowing the conduct to continue.

RELIEF REQUESTED

9. For the above reasons I request that the Supreme Court grant my application for leave to appeal or order any other relief that it decides I am entitled to receive.

2-18-20
(Date)

Kellie N Stock
(Sign your name)

Kellie Stock 260350
(Print your name and, if incarcerated, MDOC number)

Womens' Huron Valley
(Print the name of the correctional facility if incarcerated)

3201 Bemis Rd
(Print your address or address of the correctional facility)

Ypsilanti, MI 48197

After this page, you should attach copies of the trial court and Court of Appeals decisions being appealed and any other required documents, such as the PSIR or transcript of jury instructions (if the PSIR or transcript were not filed with the Court of Appeals).

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

Kellie Nichole Stock,
(Print your name)

Defendant-Appellant.

Supreme Court No. _____ (Leave blank)

Court of Appeals No. 340541 (See Court of Appeals decision)

Trial Court No. 17-003509-01-FC (See Court of Appeals brief or PSIR.)

MOTION TO WAIVE FEES

For the reasons stated in the affidavit of indigency below, I request that this Court GRANT a waiver pursuant to MCR 7.319(C) of all fees required for filing the attached pleading because I am indigent and the provisions of MCL 600.2963 requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction.

2.18.20
(Date)

Kellie N Stock
(Sign your name)

Kellie Stock 260350
(Print your name and, if incarcerated, MDOC number)

AFFIDAVIT OF INDIGENCY

My name and MDOC number (if incarcerated) are Kellie Stock 260350.

I am incarcerated at Women's Huron Valley (Name of correctional facility) in Ypsilanti, MI 48197 (City, state and zip code).

I attest that I cannot pay the filing fee. (Check the boxes that apply to you.)

- ☐ My only source of income is from my prison job and I make $.74 per day.
- ☐ I have no income.
- ☑ I have no assets that can be converted to cash.
- ☐ The Court of Appeals waived my fees in that court.

I declare that the statements above are true to the best of my knowledge, information and belief.

Kellie N Stock
(Sign your name)

2.18.20
(Today's date)

Kellie Stock 260350
(Print your name and, if incarcerated, MDOC number)

Women's Huron Valley
(Print name of correctional facility if incarcerated)

3201 Bemis Rd
(Print your address or address of correctional facility)

Ypsilanti, MI 48197

Page 11

NOTICE OF FILING APPLICATION IN THE MICHIGAN SUPREME COURT

(Mail 1 copy to the Court of Appeals and 1 copy to the trial court)

2-18-20
(Today's Date)

Check the boxes to verify that copies of this notice (**not** the application itself) were sent to the Court of Appeals and trial court.

☑ Michigan Court of Appeals
Clerk's Office
Hall of Justice
P.O. Box 30022
Lansing, MI 48909

☑ Wayne County, 3rd Circuit (Name of Trial Court)
1441 St. Antoine (Trial Court Address)
Detroit, MI 48226

PEOPLE OF THE STATE OF MICHIGAN v Kellie N Stock
(Print your name)

Court of Appeals No. 340541
(You can get this number from the Court of Appeals decision)

Trial Court No. 17-003509-01-FC
(You can get this number from the Court of Appeals decision or the PSIR)

Dear Clerk:

On this date I have filed an application for leave to appeal with the Michigan Supreme Court in the above-captioned matter.

Kellie N Stock
(Sign your name)

Kellie Stock 260350
(Print your name and, if incarcerated, your MDOC number)

Women's Huron Valley
(Print name of correctional facility, if applicable)

3201 Bemis Rd
(Print your address or address of correctional facility)

Ypsilanti, MI 48197

Appendix 3

People v. Stock, 2019 Mich. App. LEXIS 8293

Copy Citation

Court of Appeals of Michigan

December 26, 2019, Decided

No. 340541

Reporter

2019 Mich. App. LEXIS 8293 * | 2019 WL 7196905

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v KELLIE NICHOLE STOCK, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: **[*1]** Wayne Circuit Court. LC No. 17-003509-01-FC.

Core Terms

cocaine, trial court, metabolite, defense counsel, intoxicated, motor vehicle, convictions, driving, fleeing, toxicology report, argues, contends, police officer, ineffective, cause death, quotation, marks, probable cause, traffic stop, discipline, effectuate, probability, eluding, license, pursuit, defendant argues, police vehicle, witness list, memo, new trial

Judges: Before: RONAYNE KRAUSE, P.J., and CAVANAGH ▾ and SHAPIRO ▾, JJ. SHAPIRO ▾, J. (concurring in part and dissenting in part).

Opinion

PER CURIAM.

Defendant appeals as of right her jury trial convictions of reckless driving causing death, MCL 257.626(4); operating a motor vehicle while intoxicated causing death, MCL 257.625(4)(a); operating a motor vehicle while license suspended, revoked, or denied, causing death, MCL 257.904(4); first-degree fleeing and eluding, MCL 257.602a(5); second-degree fleeing and eluding, MCL 257.602a(4)(a); reckless driving causing a serious impairment of a body function, MCL 257.626(3); operating a motor vehicle while intoxicated causing a serious impairment of a body function, MCL 257.625(5)(a); and operating a motor vehicle while license suspended, revoked, or denied, causing a serious impairment of a body function, MCL 257.904(5). Defendant was sentenced, as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 19 to 50 years' imprisonment for each of her convictions. The prosecution concedes that no evidence was introduced that defendant's license had been suspended, revoked, or denied, so we reverse her convictions under MCL 257.904(4) and (5) and need not discuss those charges further. We affirm defendant's remaining convictions and sentences; and we remand **[*2]** for entry of an amended judgment of sentence consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a fatal motor vehicle accident that occurred on March 20, 2017, at the intersection of Woodward Avenue and State Fair Avenue in Detroit, Michigan. At the time of the accident, defendant was allegedly driving recklessly while she had cocaine in her body and lacked a valid driver's license. The accident resulted in the death of Bennie Sims, who was the driver of another vehicle involved in the accident, and serious injuries to Classie Butler, who was a passenger in the vehicle operated by defendant.

At trial, Detroit Police Officer Bradley Donegan testified that, while working undercover, he saw defendant drive a gray Dodge Intrepid the wrong way on a one-way street. Because Officer Donegan was in an unmarked vehicle, he directed Detroit Police Officer Sadie Howell and Detroit Police Officer Donte Jenkins, who were nearby in a semimarked police vehicle, to effectuate a traffic stop of defendant. Officer Howell and Officer Jenkins activated the police lights and siren of their vehicle in an attempt to stop defendant's vehicle on Woodward, but defendant fled **[*3]** at excessive speeds. Officer Howell and Officer Jenkins pursued defendant with their police lights and siren activated. Officer Donegan followed behind Officer Howell and Officer Jenkins.

Multiple eyewitnesses observed defendant's vehicle traveling at an excessive speed along Woodward. Butler, the passenger in the vehicle driven by defendant, testified that defendant said that an "undercover cop car" was behind them. Butler asked to be let out of the vehicle because she was scared about how fast defendant was driving, but defendant then drove faster. Officer Donegan testified that, at some point, Officer Howell and Officer Jenkins attempted to disengage from the pursuit because of the heavy traffic on Woodward. Defendant eventually drove through a red light at the intersection of Woodward and State Fair, striking a pickup truck driven by Sims. Sims died in the accident, and Butler was seriously injured. Defendant was taken to the hospital after the accident, and pursuant to a search warrant, police obtained a toxicology report showing that defendant had a cocaine metabolite in her urine.

After defendant was convicted and sentenced, this appeal ensued. In addition, defendant filed in **[*4]** the trial court a motion for a new trial and a request for a *Ginther*[1] evidentiary hearing. After holding a *Ginther* hearing, the trial court denied defendant's motion for a new trial. Defendant later filed in this Court a motion to remand the case to the trial court to expand the record regarding claims of new evidence and to move for a new trial. This Court denied the motion to remand "for failure to persuade the Court of the necessity of a remand at this time[]" but "without prejudice to a case call panel of this Court determining that remand is necessary once the case is submitted on a session calendar." *People v Stock*, unpublished order of the Court of Appeals, entered February 6, 2019 (Docket No. 340541).

In her brief on appeal, defendant asserts that she received ineffective assistance of counsel, that the trial court improperly instructed the jury, that the prosecutor engaged in misconduct, that the evidence was insufficient to support her convictions, that the trial court improperly admitted a corrected toxicology report, that the trial court improperly precluded her from introducing evidence that Officers Howell and Jenkins were disciplined for conducting the vehicle chase, and **[*5]** that she is entitled to a new trial because she recently obtained Detroit Police Department internal memo referring to the vehicle driven by Officers Howell and Jenkins as "unmarked." In her Standard 4 brief,[2] defendant presents further argument that she received ineffective assistance of counsel, that the prosecutor committed misconduct, and that she was improperly precluded from introducing evidence that Officers Howell and Jenkins were disciplined. She also argues that Officers Howell and Jenkins lacked probable cause to stop her vehicle and had not been acting in their official capacities when they did so, that her rights were violated because Officers Howell and Jenkins invoked their Fifth Amendment rights against self-incrimination, and that several statutes are unconstitutional.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

We first address defendant's arguments, in her brief on appeal and in her Standard 4 brief, that she received ineffective assistance of counsel. We do not agree.

Defendant has the "heavy burden" of disproving the presumption that she received effective assistance of counsel. *People v Head*, 323 Mich App 526, 539; 917 NW2d 752 (2018). "To prove that [her] defense counsel was not effective, the defendant must show that (1) defense counsel's **[*6]** performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that counsel's deficient performance prejudiced the defendant." *People v Lane*, 308 Mich App 38, 68; 862 NW2d 446 (2014). To establish prejudice, the defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v Randolph*, 502 Mich 1, 9; 917 NW2d 249 (2018) (quotation marks and citation omitted). "The defendant has the burden of establishing the factual predicate of [her] ineffective assistance claim." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). Defense counsel is afforded "wide discretion in matters of trial strategy." *People v Dunigan*, 299 Mich App 579, 584; 831 NW2d 243 (2013). "[T]he defendant must overcome the strong presumption that defense counsel's performance constituted sound trial strategy." *People v Maluszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

First, defendant contends in both her brief on appeal and in her Standard 4 brief that defense counsel failed to conduct a reasonable and adequate investigation of all of the charges that defendant faced and improperly focused on the charge of second-degree murder, MCL 750.317. We disagree.

Second-degree murder was the most serious charge defendant faced. An essential element of second-degree murder is that **[*7]** the defendant acted with malice. *People v Bergman*, 312 Mich App 471, 487; 879 NW2d 278 (2015). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* (quotation marks and citation omitted). Defendant contends that defense counsel inappropriately argued that she acted negligently rather than intentionally or wantonly. However, the fact that a death occurred was not disputed, so counsel properly urged the jury to reject the "grand criterion" that distinguished murder from any other kind of killing. See *People v Mesik (On Recon)*, 285 Mich

App 535, 545-546; 774 NW2d 657 (2009) (quotation omitted). A trial strategy may be sound irrespective of its success. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Here, counsel's strategy was not only eminently reasonable, but in fact successful at obtaining an acquittal on the second-degree murder charge.

Defendant's contention that counsel was unconcerned about her other charges is utterly disproven by the vigorous defense the record shows counsel to have provided at trial. Among other matters, defense counsel in fact presented arguments disputing the existence of causation during closing argument. Defendant has thus failed to establish **[*8]** the factual predicate of this ineffective assistance claim. *Douglas*, 496 Mich at 592. Defendant also fails to articulate what other investigation counsel should have performed. We will not do so on her behalf. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Defendant next contends in her appeal brief that defense counsel should have sought to suppress her toxicology report on the ground that the affidavit for the search warrant failed to establish probable cause to believe that defendant may have been intoxicated. We disagree. The affiant described some aspects of defendant's high-speed driving, the fact that her vehicle had been reported as stolen the previous month, and defendant's disregard for traffic control. "In reviewing a magistrate's decision to issue a search warrant, this Court must evaluate the search warrant and underlying affidavit in a common-sense and realistic manner." *People v Darwich*, 226 Mich App 635, 636-637; 575 NW2d 44 (1997). "Probable cause to issue a search warrant exists where there is a substantial basis for inferring a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000) (quotation marks omitted).

Defendant correctly observes that the affidavit does not specifically state that defendant may have been intoxicated, but it does state that her **[*9]** toxicology report was needed for prosecution; her suspected intoxication is a reasonable inference. The affidavit does not state that her car was swerving or that drugs or drug paraphernalia were found in the car. Defendant offers no reason why such averments are necessary, nor do we believe they are. Considering the averments together and using common sense, a substantial basis existed for inferring a fair probability that evidence of a crime would be found in defendant's toxicology records. In any event, the affidavit at least contained sufficient indicia of probable cause for an executing officer to have a good-faith belief that the warrant was valid. See *People v Goldston*, 470 Mich 523, 525-526, 540-541; 682 NW2d 479 (2004); *United States v Leon*, 468 U.S. 897, 923; 104 S Ct 3405; 82 L Ed 2d 677 (1984). Therefore, a motion to suppress would not have succeeded. "Counsel is not ineffective for failing to advance a meritless position or make a futile motion." *People v Henry (After Remand)*, 305 Mich App 127, 141; 854 NW2d 114 (2014).[3]

Defendant next argues that defense counsel was ineffective for failing to object to the admission of the toxicology results on the basis of purported gaps in the chain of custody. However, any gaps in the chain of custody normally affect only the weight of the evidence rather than its admissibility; a perfect chain of custody is not required to admit evidence, and gaps **[*10]** do not require automatic exclusion of the evidence. *People v White*, 208 Mich App 126, 132-133; 527 NW2d 34 (1994). Therefore, such an objection to the admissibility of the toxicology results would have been futile given that gaps in the chain of custody go to weight rather than admissibility. *Id.* Defendant makes a related argument that the prosecutor failed to provide the toxicology report itself to the defense at least two days before trial, as required by MCL 257.625a(8). However, defendant concedes that a copy of the toxicology report with the name "Mississippi" was given to the defense at least two days before trial. The copy containing defendant's name was provided at trial because the hospital reprinted the toxicology report, but it was the same toxicology report with the same identifying number for defendant. MCL 257.625a(8) refers to making the test *results* available at least two days before trial, which undisputedly occurred. Any motion or objection seeking exclusion of the toxicology report on either of these grounds would thus have failed, and defense counsel therefore was not ineffective for failing to advance a meritless position. *Henry*, 305 Mich App at 141.

Defendant next argues that defense counsel was ineffective for failing to argue that defendant only had a cocaine metabolite, as **[*11]** opposed to cocaine, in her system. Defendant relies on *People v Feezel*, 486 Mich 184, 204-212; 783 NW2d 67 (2010), in which our Supreme Court held that a marijuana metabolite called 11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212 of the Public Health Code. The Court concluded in *Feezel* that "a person cannot be prosecuted under MCL 257.625(8) for operating a motor vehicle with any amount of 11-carboxy-THC in his or her system." *Feezel*, 486 Mich at 205. The holding in *Feezel* was limited to 11-carboxy-THC. A fair extrapolation of *Feezel* could be that any drug metabolite is not the drug itself, so the presence of a metabolite of a schedule 1 controlled substance in a person's body is not *per se* a violation of MCL 257.625(8). See *Feezel*, 486 Mich at 207-212. However, any such extrapolation is irrelevant here.

A drug metabolite effectively proves that the drug itself was ingested at some point. See *People v Derror (On Reconsideration)*, 268 Mich App 67, 72; 706 NW2d 451 (2005), rev'd in part on other grounds 475 Mich 316; 715 N.W.2d 822 (2006). In *Feezel*, our Supreme Court explained that 11-carboxy-THC was not itself intoxicating, and it correlated poorly with actual intoxication. *Feezel*, 486 Mich at 208-211. However, actual intoxication is irrelevant here, because "any amount of [an enumerated] controlled substance" in a driver's body a strict liability crime. MCL 257.625(8). We are not addressing in this matter whether cocaine metabolites are themselves scheduled **[*12]** substances, which we presume under *Feezel* they are not, but rather whether they are probative of the presence of cocaine.

We lack the kind of expert testimony and evidence that was provided in *Feezel* and *Derror*. See *Feezel*, 486 Mich at 208, 214-215. Defendant has merely provided a printout from a website suggesting that cocaine metabolites are similarly poorly correlated with actual intoxication. However, as explained above, actual intoxication is not the relevant inquiry. Defendant's printout refers to cocaine and its metabolites having predictable half-lives, as any other drug might ordinarily be expected to behave. Consequently, there appears to be a predictable relationship between cocaine and its metabolites. Critically, in *Feezel*, our Supreme Court explained that 11-carboxy-THC was remarkable, and possibly even unique, for being detectable *weeks* after all THC had long since passed out of a person's body. *Id.* at 215. It thus stands to reason that 11-carboxy-THC is poor evidence of THC. However, no evidence has been suggested to us that any drug other than THC is metabolized and excreted in such a potentially misleading manner.

Consequently, the presence of a cocaine metabolite is unambiguous proof that a person ingested **[*13]** cocaine at some point. Importantly, the presence of a cocaine metabolite in a person's urine remains sound inferential evidence that the person is under the influence of cocaine or has cocaine in their body, especially when combined with other evidence of impairment, such as driving the wrong way down a one-way street. The essential elements of a crime can be proved by circumstantial evidence and by drawing reasonable inferences from that evidence. *People v Martin*, 271 Mich 280, 340; 721 NW2d 815 (2006). The trial court determined at defendant's *Ginther* hearing that argument regarding cocaine metabolites would not likely have made a difference to the outcome of the trial. The trial court had the benefit of presiding over the trial and observing the demeanor of the witnesses. See *McGonegal v McGonegal*, 46 Mich 66, 67; 8 NW 724 (1881). We cannot find that the trial court clearly erred in making that determination. See *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We also cannot conclude that it was unsound trial strategy for counsel to avoid delving into potentially confusing and

larg[illegible] beyond its scope. See *Dunigan*, 299 Mich App at 584; *Matuszak*, 263 Mich App at 58.

Defendant next contends that defense counsel was ineffective for failing to move for a directed verdict on the charges of operating a motor vehicle while **[*14]** license suspended, revoked, or denied, causing death, and operating a motor vehicle while license suspended, revoked, or denied, causing a serious impairment of a body function, and for failing to object to the trial court's jury instructions on the elements of those offenses. As noted at the outset of this opinion, we reverse those two convictions, so we need not address whether defense counsel was ineffective for failing to move for a directed verdict or to object to jury instructions on the elements of those offenses.

Defendant argues that defense counsel was ineffective for failing to object to alleged instances of prosecutorial misconduct. As we will discuss below, we find no such misconduct. Consequently, any objection would have been meritless, and the failure to do so cannot constitute ineffective assistance. *Henry*, 305 Mich App at 141.

In her Standard 4 brief, defendant contends that she received ineffective assistance of counsel because counsel did not challenge the prosecution calling Butler and Officer Donegan as witnesses. As we discuss further below, defendant cannot possibly have found Butler a surprise witness, and good cause existed to formally add Officer Donegan as a witness. Furthermore, Officer **[*15]** Donegan would have been merely a cumulative witness to Officers Jenkins and Howell if Officers Jenkins and Howell had not asserted their Fifth Amendment rights, making them unavailable. Defense counsel was not ineffective for recognizing that the trial court had ample basis to allow the prosecutor to call both Butler and Officer Donegan. MCL 767.40a "clearly vests the trial courts of this state with the discretion to permit the prosecution to amend its witness list at any time." *People v Callon*, 256 Mich App 312, 327; 662 NW2d 501 (2003). "Counsel is not ineffective for failing to advance a meritless position or make a futile motion." *Henry*, 305 Mich App at 141.

Defendant further argues in her Standard 4 brief that defense counsel was ineffective for failing to request a jury instruction, or to argue to the jury, that gross negligence of a victim suffices to break the causal link between the defendant's conduct and the victim's death. Defendant only offers a brief suggestion that Sims may have run a red light. In contrast, the trial testimony indicated that it was defendant who ran a red light and was also speeding. Defendant does not identify any other record evidence suggesting that Sims engaged in any gross negligence, and we will not search for any on her behalf. *Kelly*, 231 Mich App at 640-641. In any event, our review **[*16]** of the record has revealed no such evidence. A defendant is not entitled to a requested jury instruction that is not supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995). Therefore, if counsel had requested defendant's proposed instruction, the trial court would have properly refused to give it. "Counsel is not ineffective for failing to advance a meritless position or make a futile motion." *Henry*, 305 Mich App at 141.

Defendant additionally argues in her Standard 4 brief that trial counsel lied to her when she wrote him a note during the first day of trial asking, "Can you bring it out that Jenkins + Howell were fired?" In response, counsel wrote back, "Judge ruled on Tueday [sic] I couldn't bring it up I'm gonna do it on 'accident.'" As noted above and will be discussed more fully below, defendant contends that she should have been permitted to explore the discipline received by Officers Jenkins and Howell for their roles in the chase. The record is silent regarding the existence or nonexistence of any such ruling. Defendant contends that trial counsel therefore necessarily lied, and that lie necessarily constituted ineffective assistance of counsel.

However, defendant's contention relies on the assumption that no such ruling existed. **[*17]** Doubt is not proof. See *People v Wolfe*, 440 Mich 508, 519; 489 NW2d 748 (1992). Furthermore, the note seemingly reflects trial counsel's vigorous advocacy, to the point of making an effort to introduce defendant's desired evidence notwithstanding a preclusive ruling by the trial court. This strongly suggests a low likelihood that counsel lied, or had any motive to lie. Thus, defendant has not established that trial counsel did in fact lie. *Douglas*, 496 Mich at 592. Finally, as we also discuss more extensively below, defendant has not shown that it was either improper or prejudicial for the trial court to limit discussion of the later discipline of Officers Jenkins and Howell, both of whom had validly invoked their Fifth Amendment rights not to testify.

Finally, defendant argues that the cumulative effect of defense counsel's errors denied defendant a fair trial. However, for cumulative errors to deny a defendant a fair trial, each of those errors must have had some prejudicial effect. *People v Knapp*, 244 Mich App 361, 387-388; 624 NW2d 227 (2001). Because the only errors made by counsel were ultimately of no prejudicial effect, defendant was not denied a fair trial on the basis of cumulative error.

III. INSTRUCTIONAL ERROR

Defendant next argues that the trial court committed an instructional error when it answered a question from the jury **[*18]** during the jury's deliberation. We disagree.

"This Court reviews jury instructions as a whole to determine whether there is error requiring reversal." *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). Defendant is entitled to a jury instructed on "all elements of the charged offenses" and any "issues, defenses, and theories supported by the evidence." *Head*, 323 Mich App at 537 (quotation omitted). However, "[a]n imperfect instruction is not grounds for setting aside a conviction if the instruction fairly presented the issues to be tried and adequately protected the defendant's rights." *Id.* (quotation omitted).

During deliberation, the jury sent a note asking, "Does turning police lights on constitute ordering the defendant to stop her vehicle under the law?" The trial court answered this question by instructing the jury as follows:

> The drive—and I'm gonna give you the Michigan Law with regard to this. The driver of a motor vehicle, when given a visual or a [sic] audible signal by a police officer must bring the motor vehicle to a stop. This visual or audible signal may be given by hand, voice, emergency light or siren.

This instruction was based on the following language contained in this Court's opinion in *People v Green*, 260 Mich App 710, 717; 680 NW2d 477 (2004):

> Review of the plain language of MCL 750.479a(1) reveals that a driver **[*19]** of a motor vehicle, when given a visual or audible signal by a police officer, must bring the motor vehicle to a stop. This visual or audible signal may be given by hand, voice, emergency light, or siren. [Citation omitted.]Defendant argues that the trial court

> [illegible] requirement that the "signal must come from an officially identified police vehicle in order to hold a driver accountable for the offense of fleeing and eluding." *Green*, 260 Mich App at 718.

We find defendant's contention inapposite. The trial court had already instructed the jury on the elements of first-degree fleeing and eluding as well as second-degree fleeing and eluding; in doing so, the trial court stated that the prosecutor was required to prove, as relevant here, "that any vehicle driven by the officer was adequately marked as a law enforcement vehicle." The jury's question was not about the requirement that the vehicle be adequately marked as a law enforcement vehicle, which was not, in any event, seriously in dispute: Officers Jenkins and Howell were established as driving a semimarked police vehicle. Rather, the jury asked whether turning on police lights constituted ordering defendant to stop her vehicle. The trial **[*20]** court answered the question that the jury asked, and in doing so the trial court quoted the pertinent language from this Court's opinion in *Green*. Therefore, because the jury was not asking the trial court about the requirement that a police vehicle be adequately marked, the court was not required to again instruct the jury with respect to that element of the fleeing and eluding charges. Taken as a whole, the trial court's instructions were adequate.

IV. PROSECUTORIAL MISCONDUCT

Defendant next argues that she was denied a fair and impartial trial on the basis of a wide array of alleged prosecutorial misconduct. We disagree.

"Generally, prosecutors are accorded great latitude regarding their arguments, and are free to argue the evidence and all reasonable inferences from the evidence as they relate to their theory of the case." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). Claims of prosecutorial misconduct are reviewed on a case-by-case basis, considering the context of the conduct or remarks made by the prosecutor. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Prosecutors are not required to "confine argument to the blandest possible terms," and they have greater latitude in responding directly to defense counsel's arguments than they might otherwise have. *People v Dobek*, 274 Mich App 58, 64, 66; 732 NW2d 546 (2007).

Defendant first **[*21]** contends that the prosecutor engaged in misconduct during closing argument by asserting that defendant had cocaine in her system; defendant suggests this was improper because defendant actually had a cocaine metabolite, rather than cocaine, in her body. First, defendant's argument is extremely cursory and unsupported by any citation to a transcript. See MCR 7.212(C)(7); *Kelly*, 231 Mich App at 640-641. Furthermore, as we have discussed, the presence of cocaine metabolites in defendant's urine, given her clear lack of an opportunity to ingest any cocaine between the accident and the collection of the urine specimen, unambiguously creates a reasonable inference that she did in fact have cocaine in her body. Thus, the prosecutor's argument in closing that defendant had cocaine in her system was supported by evidence and reasonable inferences from the evidence.

Defendant next contends that, during rebuttal closing argument, the prosecutor attempted to shift the burden of proof and personally denigrated defense counsel. Specifically, during rebuttal closing argument, the prosecutor argued, in relevant part:

> One of my mentors in the Prosecutor's Office used to tell me that; in any criminal case there's really only two claims being made. **[*22]** Either it wasn't me. Or it was me but here's my excuse.
>
> Now clearly this isn't a it wasn't me. This isn't a case of identification being an issue. We know everyone involved. And we know she was driving.
>
> This isn't a case of well, here's my explanation or her's [sic] my excuse. She has no excuse. She has no explanation. She can try and—[defense counsel] can work hard. And he's a great attorney.
>
> But he's trying to do some smoke and mirrors. He's trying to say well, you know, if you look at the evidence this one kind of way and you have a conspiracy theory maybe she's not guilty. Maybe.

Importantly, this was in rebuttal to defendant's closing argument, which included, in relevant part, the following statements:

> So at the end of the day you have to see, you just can't look at the prosecutions [sic] pretty videos and pretty power [point] presentations. You got to really look and break down the elements of the crime.
>
> It's a strict liability on the prosecution that they have to put that puzzle together completely. Each and every element of the crime. They can't put have [sic] of it together and say, well, it looks like what I said it is. It's mostly what I say it is. They have to show you all the **[*23]** elements. And I don't believe that they have.
>
> * * *
>
> So let's not fall for the government's smoke about pretty pictures and pretty power point presentations and let's get down to the meat and potatoes of what it is. And they just haven't shown it to you. And I'm asking for a not guilty on everything.

Defense counsel also alluded in closing to the prosecutor's failure to obtain "black box information" regarding the vehicles involved in the accident, even though there was unrebutted testimony that no "black box information" was available given the ages of the vehicles. Defense counsel further suggested in closing that it was unknown why the police officers were trying to stop defendant's vehicle and that the real reason for attempting to stop her vehicle was not because she had been driving the wrong way on a one-way street.

When viewed in its proper context, the prosecutor's remarks were responsive to defense counsel's arguments that the prosecution had not established each element of each charged offense. The prosecutor reasonably pointed out that identification, which "is an element of every offense," *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008), was not

at issue. Furthermore, there was no real dispute that one person died and one **[*24]** person was injured in the accident; defendant presented it during opening argument as merely "[a] tragic accident where [defendant] exhibited some negligence" and that it specifically was not murder. One element of second-degree murder is that the defendant did not have a lawful justification or excuse for causing the victim's death. *Bergman*, 312 Mich App at 487. The prosecutor appropriately responded to defendant's various insinuations by pointing out that it was defendant who was missing the point. Under the circumstances, the prosecutor's remarks in rebuttal closing argument to the effect that defense counsel was "trying to do some smoke and mirrors[]" and that defense counsel was alluding to a "conspiracy theory" were not improper or unfair in light of the arguments made by defense counsel.

In any event, the trial court instructed the jury that the prosecutor had the burden of proving each element of the charged offenses beyond a reasonable doubt and that defendant was not required to prove her innocence or to do anything. The court further instructed the jury that the jury was required to decide the case only on the basis of the properly admitted evidence, that the lawyers' statements and arguments were not **[*25]** evidence, and that the jury was the sole finder of fact. The trial court's instructions were "sufficient to eliminate any prejudice that might have resulted from the prosecutor's remarks." *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Indeed, the jury acquitted defendant of second-degree murder.

In her Standard 4 brief, defendant further argues that the prosecutor committed misconduct by untimely filing a witness list and calling an unendorsed witness. This assertion is not wholly baseless, but we find no indication that defendant was prejudiced.

MCL 767.40a(3) provides, "Not less than 30 days before the trial, the prosecuting attorney shall send to the defendant or his or her attorney a list of the witnesses the prosecuting attorney intends to produce at trial." MCL 767.40a(4) states, "The prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." It appears that the prosecution filed its witness list fewer than 30 days before trial. It also appears that the prosecutor called Officer Donegan as a witness even though **[*26]** Officer Donegan was not indicated as being endorsed on that list and without a formal grant of leave to do so. However, a prosecutor's failure to comply with these provisions does not warrant relief unless the defendant demonstrates unfair prejudice arising from the violation. *Callon*, 256 Mich App at 328-329; *People v Williams*, 188 Mich App 54, 59-60; 469 NW2d 4 (1991). "Mere negligence of the prosecutor is not the type of egregious case for which the extreme sanction of precluding relevant evidence is reserved." *Callon*, 256 Mich App at 328.

Defendant's argument, and her testimony at the *Ginther* hearing, are quite confusing. It appears that defendant believed Butler had not been listed on an original witness list but that defense counsel told defendant that the prosecutor had provided an amended witness list on June 16, 2017, that had Butler's name on it. Defendant also seemed to suggest that Officer Donegan's name was not on the prosecutor's original witness list but was added later, which defendant said shocked her because she did not know he existed. Nonetheless, it defies any credulity to suggest that the defense could possibly have been surprised by Butler's involvement, given that Butler was defendant's passenger, Butler had been seriously injured in the accident, and Butler was listed on the **[*27]** charging documents as a complainant or victim. We can conceive of no prejudice to defendant as a result of any tardy indication that Butler might be a witness.

Regarding Officer Donegan, although the record is not developed regarding the reason for him not being endorsed, it appears his testimony ultimately became necessary at trial in light of the fact that Officer Howell and Officer Jenkins were unavailable to testify because they were expected to plead the Fifth Amendment. Given the unavailability of Officer Howell and Officer Jenkins, the testimony of Officer Donegan, who followed behind Officer Howell and Officer Jenkins during the police chase, became far more critical in order to provide evidence regarding the attempt by police officers to effectuate a traffic stop of defendant as well as defendant's flight from the police officers, leading to the accident. There is no indication of any improper motive on the part of the prosecutor for failing to endorse Officer Donegan. Officer Donegan would have been merely a cumulative witness to Officers Jenkins and Howell, if Officers Jenkins and Howell had not asserted their Fifth Amendment rights, making them unavailable. Overall, if defendant had raised the matter **[*28]** at trial, it appears quite certain that the trial court would have found good cause to formally add Officer Donegan as an endorsed witness.

In any event, defendant has not explained how her defense might have changed if the prosecutor had filed its witness list on time and if Officer Donegan had been endorsed on the witness list. Defendant has not shown that, with additional time, she would have discovered evidence to rebut either witness's testimony. It is not sufficient to make a broad assertion that the late addition of a witness denied a defendant the opportunity to develop an adequate defense. Absent a specific showing of unfair prejudice, defendant's claim must fail.

Further in her Standard 4 brief, defendant argues that the prosecutor failed to correct perjured testimony. Defendant specifically objects to Officer Donegan's testimony that Officers Jenkins and Howell attempted to disengage from their pursuit of defendant's vehicle before the accident. Defendant argues that because Officers Howell and Jenkins were later disciplined for violating an internal police department policy regarding vehicular pursuits, Officer Donegan's testimony must have been perjured. We do not accept **[*29]** defendant's reasoning, and we do not find it supported by the evidence.

There is simply nothing logically incompatible about Officers Howell and Jenkins being disciplined for improperly initiating a pursuit, and Officers Howell and Jenkins also attempting to disengage from that pursuit. Officer Donegan testified that he was approximately 15 to 20 car lengths behind the pursuit, and at some point,

> Officers Howell and Jenkins attempted to disengage. So they just kinda dropped back due to the heavy flow of traffic. It wasn't worth it. The gray Intrepid continued northbound on Woodward at a high rate of speed.

The internal affairs memo that defendant has provided explicitly states,

> Furthermore, while it is unclear at what specific point Officers Jenkins and Howell slowed down and started to discontinue the pursuit, the video evidence does illustrate a reduction in the officers' speed prior to the collision.

Thus, there is nothing inherently unbelievable or suspicious on its face about Officer Donegan's testimony that Officers Howell and Jenkins attempted to disengage at some point, and it is in fact supported by the evidence defendant claims to be contradictory. In short, there is no evidence **[*30]** that Officer Donegan's testimony was false, let alone that it was willfully

false and thus comprised perjury. See *People v Lively*, 470 Mich 248, 253-254; 680 NW2d 878 (2004) (perjury is a willfully false statement). The prosecutor could reasonably conclude in the circumstances of this case that Officer Donegan was telling the truth to the best of his ability.[4]

V. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that there was insufficient evidence to support her convictions. We agree with defendant that there was insufficient evidence to support her convictions for operating a motor vehicle while license suspended, revoked, or denied, causing death, MCL 257.904(4); and operating a motor vehicle while license suspended, revoked, or denied, causing a serious impairment of a body function, MCL 257.904(5). The prosecution concedes that defendant's license had merely expired, so there was necessarily insufficient evidence to sustain either conviction. See *People v Acosta-Baustista*, 296 Mich App 404, 409; 821 NW2d 169 (2012). Thus, as noted at the outset of this opinion, those two convictions must be reversed. However, we find the evidence sufficient to sustain defendant's other convictions.

A defendant's argument regarding the sufficiency of the evidence is reviewed de novo. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). "When reviewing a defendant's challenge to the sufficiency of the **[*31]** evidence, [this Court] review[s] the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011) (quotation marks and citation omitted). Direct evidence of guilt is not required. *Id.* "Rather, circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Id.* (quotation marks, brackets, and citation omitted). "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *Kanaan*, 278 Mich App at 619. "All conflicts in the evidence must be resolved in favor of the prosecution." *Id.*

Defendant's charges of first-degree fleeing and eluding, MCL 257.602a(5); and second-degree fleeing and eluding, MCL 257.602a(4)(a); both include a relevant essential elements that the police officers' vehicle was adequately identified as a law enforcement vehicle, that the police officers ordered defendant to stop, that defendant was aware of that order, and that defendant violated that order by trying to flee. See MCL 257.602a(1); *People v Grayer*, 235 Mich App 737, 740-742; 599 NW2d 527 (1999). "[A] conviction for the crime of fleeing and eluding a police officer will be contingent **[*32]** on the facts and circumstances in each case, and there must be sufficient indicia through the police uniform and vehicle that the person making the stop is, in fact, a police officer." *Green*, 260 Mich App at 719 n 3.[5] An effort to flee may be inferred from a defendant increasing the speed of their vehicle. *Grayer*, 235 Mich App at 741. An order to stop may be given by the activation of a siren or emergency lights on a police vehicle. *Id.*

The evidence, from multiple witnesses, established that the police vehicle driven by Officers Howell and Jenkins was a semimarked police vehicle that had red and blue lights on the grill, red and blue lights on the rear mirror, a siren, and a push bumper. It was further established that the lights and siren were functional. In her Standard 4 brief, defendant contends that their vehicle "was not marked with 'Police,' 'Detroit,' 'Wayne County,' 'Michigan.'" Defendant provides no authority that such specific markings are required, and we will not search for such authority on her behalf. *Kelly*, 231 Mich App at 640-641. The evidence also established that Officers Howell and Jenkins activated their vehicle's lights and siren, and the lights and siren were clearly observed by witnesses during and after the pursuit. Furthermore, the jury was shown **[*33]** a video recording of the police pursuit, so the jury could determine for itself the adequacy of the vehicle's markings and the operation of the vehicle's lights and siren. Thus, the evidence amply established that the vehicle was adequately identified as a law enforcement vehicle, and officers gave defendant an order to stop.

Defendant attempts to challenge whether she was aware that she had been ordered to stop by police officers. In her Standard 4 brief, she contends that "[f]or all she knew, [the vehicle behind her] may have been someone trying to commit an illegal act against her such as carjacking." It is highly unlikely that defendant was unaware of the police vehicle's lights and siren. It may, perhaps, remotely possible that a criminal might have illegally constructed an imitation police vehicle for precisely that purpose. However, Butler, defendant's passenger, testified that defendant explicitly stated that there was an "undercover cop car" behind them. Defendant contemporaneously began accelerating, frightening Butler. Butler started screaming and telling defendant to let Butler out of the car, whereupon defendant accelerated further. Thus, the evidence clearly also established **[*34]** that defendant was aware that she had been given an order to stop by a police and that she violated that order by attempting to flee. A rational trier of fact could have inferred from defendant's continued speeding and disregard of a traffic light that defendant was still attempting to flee at the time of the accident, notwithstanding Officers Howell and Jenkins attempting to disengage. The evidence was sufficient to support defendant's fleeing and eluding convictions.

Defendant's sole challenge to her convictions of operating a motor vehicle while intoxicated causing death, MCL 257.625(4)(a); and operating a motor vehicle while intoxicated causing a serious impairment of a body function, MCL 257.625(5)(a); is that there is no evidence that she drove with any amount of a controlled substance in her body. Again, defendant argues that her toxicology report showed the presence of cocaine metabolites in her urine, not specifically cocaine. However, we have already discussed above why *Feezel*, 486 Mich 184; 783 N.W.2d 67, is inapplicable to the cocaine metabolites, and why the presence of the cocaine metabolites here supports a reasonable inference that defendant had cocaine in her body while she was driving. We disagree with our dissenting colleague's assertion **[*35]** that we are shifting the burden of proof. The prosecutor is not required to preemptively disprove "every reasonable theory consistent with innocence." *Martin*, 271 Mich at 340 (quotation omitted). We do not believe the prosecutor was obligated to establish that cocaine metabolization behaves as one might ordinarily expect any drug to behave. As discussed, THC is metabolized and excreted in a uniquely misleading manner. The cocaine metabolite proves that cocaine was ingested at some point and constitutes inferential evidence that cocaine itself is present in the body. The elements of a crime may be proved by circumstantial or inferential evidence. *Id.* The evidence was sufficient to support defendant's intoxicated driving convictions.

Finally, defendant's sole challenge to her convictions of reckless driving causing death, MCL 257.626(4); and reckless driving causing a serious impairment of a body function, MCL 257.626(3); is that there was insufficient evidence that she drove with willful or wanton disregard for the safety of persons. Both offenses share the relevant requirement that defendant operated a vehicle on a highway "in willful or wanton disregard for the safety of persons or property." MCL 257.626(2); *People v Jones*, 497 Mich 155, 167; 860 NW2d 112 (2014). Under that standard, a defendant need **[*36]** not intend to cause harm, but must

act with more than simple carelessness and must knowingly disregard the dangerousness of their conduct. *People v Carll*, 322 Mich App 690, 695; 915 NW2d 387 (2018).

Defendant argues that there is no evidence of how fast she was driving, that there is insufficient evidence that she knew the police were trying to effectuate a traffic stop, and that she only had a cocaine metabolite, rather than cocaine, in her system. However, there was ample eyewitness testimony that defendant was driving at excessive speeds along Woodward, including one eyewitness's testimony that defendant's vehicle was traveling at approximately 70 miles an hour, far in excess of the speed vehicles normally travel in that area. Even presuming it could not be determined specifically how fast defendant was driving, the trier of fact could reasonably conclude that defendant must have been aware that she was driving far too fast for safety. The risk of losing control and the danger to others from doing so is well known to all. Defendant's excessive speed and disregard for traffic control devices was sufficient to support a conclusion that defendant drove the vehicle with willful or wanton disregard for the safety of persons. See *Carll*, 322 Mich App at 696-698. We have already **[*37]** discussed the lack of merit to defendant's other contentions. The evidence was sufficient to support defendant's reckless driving convictions.

VI. ADMISSION OF TOXICOLOGY REPORT

Defendant next argues that the trial court abused its discretion by admitting the copy of the toxicology report containing defendant's name. Defendant contends that exclusion of this evidence was required to remedy a discovery violation because the prosecutor did not provide this copy of the toxicology report to the defense until the first day of trial. We disagree.

A trial court's decision whether to admit evidence is reviewed for an abuse of discretion, but any preliminary questions of law are reviewed de novo. *People v Mann*, 288 Mich App 114, 117; 792 NW2d 53 (2010). This Court also reviews for an abuse of discretion a trial court's choice of a remedy for a discovery violation. MCR 6.201(J); *People v Jackson*, 292 Mich App 583, 591; 808 NW2d 541 (2011). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011).

Importantly, the toxicology report *itself* had been provided to the defense long before trial. The *only* difference between the report previously provided and the report admitted is that the original report bore a pseudonym rather than defendant's actual name. According **[*38]** to the prosecution on the first day of trial, the hospital had only just then provided a copy bearing defendant's name. There was no serious dispute that the original report was, in fact, for defendant. Indeed, the identification number used for defendant, and all other content, was identical. Furthermore, as noted above, MCL 257.625a(8) refers to making the test *results* available at least two days before trial. For purposes of compliance with MCL 257.625a(8), the provision of the entire report with an undisputed pseudonym was at worst an insignificant technicality. See *In re Traub Estate*, 354 Mich 263, 278-279; 92 NW2d 480 (1958). Defendant certainly cannot have been surprised by the substantive contents of the report.

Defendant contends that she was prejudiced because the trial court had initially ruled that the copy containing defendant's name was inadmissible, and her attorney then told the jury in his opening statement that there would be no evidence that defendant had recently used any drugs or alcohol. However, the trial court in its ruling had left open the possibility of admitting the copy of the toxicology report that used a pseudonym and contained an identifying number for defendant. The defense was thus on notice that there remained a possibility that a version **[*39]** of the toxicology report could still be admitted. Even if a discovery violation had occurred, "the trial court must balance the interests of the courts, the public, and the parties in light of all the relevant circumstances." *Jackson*, 292 Mich App at 591 (quotation marks and citation omitted). Because we cannot conclude that defendant was meaningfully prejudiced, we cannot conclude that the trial court abused its discretion in admitting the report.

VII. EXCLUSION OF EVIDENCE REGARDING OFFICERS' DISCIPLINE

Defendant next argues that the trial court erred by excluding evidence that Officers Howell and Jenkins were disciplined for violating an internal police department policy in connection with their pursuit of defendant's vehicle. We disagree.

Initially, defendant fails to explain how she would have introduced evidence regarding this discipline. Officer Howell and Officer Jenkins did not testify at trial. Defense counsel's testimony at the *Ginther* hearing indicated that the defense did not wish to call those officers as witnesses. Defense counsel testified, "I wouldn't use [Officer Howell and Officer Jenkins] anyway. That wouldn't be strategically smart to call a police officer in defense's case in chief. Not in **[*40]** this situation, anyway." Notwithstanding the expansive array of alleged deficiencies in her trial counsel's performance, as discussed above, defendant notably does not challenge counsel's strategic assessment of the value of Officers Howell's and Jenkins's testimonies.

Defendant seemingly argues that the trial court should have required Officer Jenkins and Officer Howell to appear as witnesses at trial. The officers then could have, if they wished, invoked their Fifth Amendment privileges in response to specific questions, rather than make a blanket assertion of their Fifth Amendment privileges and thus avoid appearing at trial altogether. However, in light of defense counsel's unchallenged and presumably sound strategic determination that it would have been unwise to call Officers Howell and Jenkins as witnesses, there is no reason to believe that the defense would have called those officers as witnesses at trial even if he could have called them.[6] Defendant does not further explain how she might have gone about introducing evidence of the discipline imposed upon Officers Howell and Jenkins. As discussed above, defense counsel apparently intended to find a way to introduce the evidence by "accident," but we do not **[*41]** know what such an accident might entail. We decline to speculate. *Kelly*, 231 Mich App at 640-641.

Moreover, defendant has failed to establish that any evidence regarding the discipline of the officers would have been admissible under the rules of evidence. "Evidence which is not relevant is not admissible." MRE 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Under MRE 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Defendant argues that any evidence that the officers failed to follow an internal police department policy during the pursuit would have been relevant to her defense that the officers were not acting in the lawful performance of their duties, so she was thus not guilty of the fleeing and eluding charges. However, defendant has not offered any authority tending to suggest that a police officer's violation of an internal department **[*42]** policy affects the legality of the officer attempting to effectuate a traffic stop for a clear traffic violation. We will not search for any such authority. *Kelly*, 231 Mich App at 640-641. Furthermore, it is common knowledge that internal policies often pertain to procedures for the convenience of administration, or, as the prosecution points out, limiting civil liability, and lack any true force of law. Because defendant has not explained how the violation of an internal police department policy has any bearing on whether the officers were acting in the lawful performance of their duties, evidence of that violation was properly excluded as irrelevant. Furthermore, any marginal relevance would have been overwhelmed by the injection of confusing and misleading issues extraneous to defendant's own conduct of fleeing a police vehicle at excessive speeds and driving through a red light, thereby killing one person and seriously injuring another person.

In her Standard 4 brief, defendant further argues that the trial court denied her constitutional right to present a defense by limiting her ability to cross-examine Officer Donegan regarding Officers Howell's and Jenkins's discipline. However, as discussed, defendant has **[*43]** not established that this evidence would be admissible or relevant. "[T]he right to present a defense extends only to relevant and admissible evidence." *People v Solloway*, 316 Mich. App. 174, 198; 891 N.W.2d 255 (2016) (quotation omitted); see also *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993) ("The right of cross-examination is not without limit; neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject."). Defendant has therefore not established a violation of her constitutional right to present a defense.

VIII. NEWLY DISCOVERED EVIDENCE

Defendant next argues that she is entitled to a new trial because she has obtained a Detroit Police Department internal affairs memo in which the principal author of the memo, Detroit Police Sergeant Larry N. Campbell, referred to the vehicle used by Officers Howell and Jenkins as "unmarked."[7,8] Defendant suggests that this shows that Officer Donegan committed perjury when he described the vehicle as semimarked. Defendant also asserts that the internal affairs memo indicates that Officer Howell and Officer Jenkins failed to follow internal police department policy; defendant says that this would support her defense that the officers were not acting in their lawful capacity when they pursued her. Defendant **[*44]** therefore contends that this newly discovered evidence would make a different result probable on retrial. We disagree.

Motions for a new trial on the basis of newly discovered evidence are not regarded with favor. *People v Rao*, 491 Mich 271, 279-280; 815 NW2d 105 (2012). A defendant must show that:

> (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. [*People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003) (quotation marks and citation omitted).]

The defendant has the burden of satisfying each part of this test. *Rao*, 491 Mich at 279. "The discovery that testimony introduced at trial was perjured may be grounds for a new trial." *People v Mechura*, 205 Mich App 481, 483; 517 NW2d 797 (1994). Furthermore, the newly discovered evidence must be admissible. See *People v Grissom*, 492 Mich 296, 324; 821 NW2d 50 (2012) (MARILYN KELLY, J., concurring); see also *People v Darden*, 230 Mich App 597, 606; 585 NW2d 27 (1998).

Defendant fails to explain how the contents of the internal affairs memo would be admissible. Police reports generally constitute inadmissible hearsay. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 254; 805 NW2d 217 (2011). Defendant simply does not address how the memo or its substantive contents could be introduced into evidence. We again will not make such arguments on her behalf. *Kelly*, 231 Mich App at 640-641. **[*45]** Furthermore, Sergeant Campbell's errant references to the vehicle as unmarked were corrected by the commanding officer, Detroit Police Lieutenant Jeffrey Hahn, who noted that the vehicle was semimarked. The evidence in the record overwhelmingly supported the fact that the vehicle was semimarked, and indeed that defendant was actually aware that it was a police vehicle. The memo, read as a whole and including Lieutenant Hahn's correction, does not support any suggestion that Officer Donegan committed perjury. Finally, as already discussed, defendant has not explained how any violation of internal police department policies affect whether an officer acted lawfully.

Therefore, defendant has not established that she is entitled to a new trial on the basis of newly discovered evidence. Nor is there any basis to remand the case to the trial court so that the newly discovered evidence can be presented to the trial court. A remand would be futile because there is nothing in the internal affairs memo that would make a different result probable on retrial.

IX. PROBABLE CAUSE

In her Standard 4 brief, defendant argues that Officer Jenkins and Officer Howell lacked probable cause to attempt to effectuate **[*46]** a traffic stop of defendant's vehicle. We disagree.

As discussed earlier, Officer Donegan saw defendant drive the wrong way on a one-way street, which is a civil infraction. See MCL 257.641. Because Officer Donegan was in an unmarked vehicle, he advised his "take down crew," comprised of Officers Jenkins and Howell, who were in a semimarked vehicle, to effectuate a traffic stop of defendant. Defendant argues that Officers Howell and Jenkins lacked probable cause to effectuate a traffic stop of defendant because they did not see her commit the civil infraction. However, probable cause does not necessarily need to be based on direct and personal observations

by the seized or arresting officer, particularly in the presence of exigent and dangerous circumstances. *People v Barbarich*, 291 Mich App 468, 481-482; 807 NW2d 56 (2011). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v United States*, 517 U.S. 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Officer Donegan's observation of defendant's civil infraction constitutes sufficient probable cause to effectuate a traffic stop.

In any event, the officers did not ultimately effectuate a traffic stop, because defendant fled the officers at high speed, drove through a red light, **[*47]** and caused a crash that killed one person and seriously injured another. Defendant cites authority pertaining to the issuance of a citation for a civil infraction, MCL 257.742(3). However, there is no issue here whether defendant was properly issued a citation for a civil infraction. The issue raised by defendant is whether the police officers had probable cause to effectuate a traffic stop of defendant. There is nothing in MCL 257.742(3) that precluded Officers Howell and Jenkins from, as discussed above, properly relying on Officer Donegan's observations when they attempted to effectuate a traffic stop of defendant. In any event, even if Officers Howell and Jenkins acted illegally, defendant *chose* to flee in a devastatingly dangerous manner and has not offered any plausible excuse for doing so. Thus, even if Officers Howell and Jenkins did lack probable cause, that lack has no bearing on defendant's guilt.

X. UNCONSTITUTIONALLY VAGUE STATUTES

Defendant next argues that certain statutory provisions are void for vagueness. We disagree.

Defendant first contends that MCL 257.625(8), which prohibits operating a motor vehicle with any amount of certain controlled substances in the driver's body, is unconstitutionally vague and overbroad **[*48]** as applied to defendant. Defendant asserts that the provision fails to provide an ordinary person with notice of what conduct is prohibited, has potential for arbitrary and discriminatory enforcement, and is not rationally related to the objective of the statute. Our Supreme Court has rejected this argument. See *People v Derror*, 475 Mich 316, 336-340; 715 NW2d 822 (2006), overruled in part on other grounds by *Feezel*, 486 Mich 184; 783 N.W.2d 67. The Court also rejected the contention that the statute was unconstitutionally vague by creating a potential for arbitrary and discriminatory enforcement, or that it was not rationally related to its objective. *Derror*, 475 Mich at 336-340.

We recognize that in *Feezel*, 486 Mich at 211-212, our Supreme Court opined that the *Derror* Court's interpretation of MCL 257.625(8) was "probably unconstitutional," but the *Feezel* Court then stated that it declined to address the constitutionality of MCL 257.625(8). Therefore, the constitutional analysis in *Derror* remains precedent by which this Court is bound. See *O'Dess v Grand Trunk Western R Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996) ("A decision of the Supreme Court is binding upon this Court until the Supreme Court overrules itself[.]").

Defendant next argues that the reckless driving causing death statute, MCL 257.626(4), and the moving violation causing death statute, MCL 257.601d(1), are both void for vagueness because some conduct could be proscribed by both statutes. Defendant **[*49]** asserts that there is great potential for arbitrary or discriminatory prosecution and that the statutes fail to inform an ordinary citizen of which statute governs the citizen's behavior. However, the Legislature may enact cumulative punishments for the same conduct under different statutes. *People v Mitchell*, 456 Mich 693, 695; 575 NW2d 283 (1998). A statute is void for vagueness not because it may have some overlap with another statute, but if it fails "to give 'fair warning' to defendants of what conduct will constitute a crime without resorting to speculation" or to "provide adequate guidance to the trier of fact without requiring a court to 'interpret' any ambiguities." *Mesik*, 285 Mich App at 545.

Defendant has not been charged with, or convicted of, moving violation causing death, so the constitutionality of MCL 257.601d(1) is not pertinent. MCL 257.626(4) provides that "a person who operates a vehicle in violation of subsection (2) and by the operation of that vehicle causes the death of another person is guilty of a felony . . . " MCL 257.626(2) prohibits operating "a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons **[*50]** or property . . . " The meanings of the words used in these provisions "can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *Mesik*, 285 Mich App at 545 (quotation omitted). Therefore, the wording of the statute is therefore sufficiently definite to afford proper notice of the conduct proscribed. *Id.* at 544-546.

The fact that it might be possible for a prosecutor to arbitrarily decide which statute to apply does not require a person to guess at what conduct is proscribed by law; the question is whether the statute is itself incomprehensible. See *People v Wood*, 326 Mich App 561, 588; 928 NW2d 267 (2018), lv gtd __ Mich __, 923 N.W.2d 599 (2019). As noted, the wording of MCL 257.626(4) is not vague, so it is not unconstitutionally void for vagueness.

XI. CONCLUSION

Defendant's convictions of operating a motor vehicle while license suspended, revoked, or denied, causing death, MCL 257.625(4)(a); and operating a motor vehicle while license suspended, revoked, or denied, causing a serious impairment of a body function, MCL 257.904(5); are reversed. Defendant's remaining convictions and sentences are affirmed. We remand for entry of an amended judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh **[*51]**

Concur by: Douglas B. Shapiro (In Part)

Dissent by: Douglas B. Shapiro (In Part)

Dissent

SHAPIRO, J. (*concurring in part and dissenting in part*).

I concur with my colleagues in all respects except their conclusion that there was sufficient evidence to support the conviction of operating a motor vehicle while intoxicated causing death, MCL 257.625(4)(a). The conclusion that defendant was intoxicated rested on post-accident urine and blood tests that were positive for an unidentified "cocaine metabolite," not cocaine. Presence of a metabolite is not conclusive proof that a defendant was intoxicated at the time of the crash. See *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010). The prosecution offered no proof that the presence of a metabolite was the equivalent of the presence of cocaine itself or how long the relevant metabolite remains in the blood stream following use of cocaine. The majority concludes that *Feezle* is not relevant here, noting that the marijuana metabolite has no pharmacological or intoxicating effect. The same is true here; we have no basis to conclude that the cocaine metabolite indicated use on the day of the crash nor that the quantity of the metabolite correlates to actual intoxication. The majority concludes that it was defendant's burden to prove that cocaine **[*52]** metabolites are not reliable measures of actual cocaine blood levels. However, the burden of proof was on the prosecution to prove each element of the offense—this includes proof of intoxication and/or a listed controlled substance in the bloodstream. *Feezel* makes clear that such a linkage must be shown in order to prove the element of intoxication. The majority suggests that the jury could infer intoxication, but without evidence of the metabolites half-life it is speculative to conclude it is sufficient. The majority also notes that defendant was driving the wrong way on a one-way street, an action that can, and does, occur without any involvement of drugs. The arresting officer's testimony provides no other support for the conclusion that defendant was intoxicated.

Accordingly, I would reverse defendant's conviction under MCL 257.625(4)(a) and dissent as to that issue. In all other respects I concur.

/s/ Douglas B. Shapiro

Footnotes

1 *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

2 See Supreme Court Administrative Order 2004-6, Standard 4.

3 Given the analysis set forth above, it is unnecessary to address the prosecutor's alternative suggestion that suppression was not required in light of MCL 257.625a(6)(e).

4 In her Standard 4 brief, defendant also presents the bare assertion, unsupported by any argument, that she was denied her constitutional rights of due process and confrontation when Officer Donegan testified regarding the actions of Officer Howell and Officer Jenkins. We will not develop this argument on her behalf. *Kelly*, 231 Mich App at 640-641. In any event, Officer Donegan testified about his own observations, including what he saw when Officers Jenkins and Howell tried to effectuate a traffic stop of defendant. We are unaware of any authority that it is clearly or obviously erroneous to allow a witness to testify about what he saw other people do.

5 Defendant makes no argument challenging the adequacy of the police uniforms worn by Officer Howell and Officer Jenkins.

6 We therefore also reject defendant's further argument in her Standard 4 brief that the trial court improperly insulated Officer Jenkins and Officer Howell from being questioned, that the officers should not have been permitted to make a blanket assertion of their Fifth Amendment rights, and that the jury should have been given evidence that the

officers procured their own unavailability. Defendant has not challenged counsel's strategic determination that he would not have called Officers Howell and Jenkins in any event. Therefore, defendant cannot show that any error of the trial court in permitting the officers to avoid appearing at trial had any effect.

[7] The internal affairs memo is attached to defendant's brief on appeal. It is not contained in the lower court record. In general, a party may not expand the record on appeal. *People v Nix*, 301 Mich App 195, 203; 836 NW2d 224 (2013). We will nonetheless address the issue given that the relief that defendant requests is either a new trial or a remand to the trial court so that she can present the new evidence to the trial court, and given that this Court denied defendant's motion to remand "without prejudice to a case call panel of this Court determining that remand is necessary once the case is submitted on a session calendar." *People v Stock*, unpublished order of the Court of Appeals, entered February 6, 2019 (Docket No. 340541).